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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial report of States parties due in 1997

Addendum

KOWEIT

[ORIGINAL ARABIC]

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Introduction

1. The State of Kuwait has consistently endeavoured to support, consolidate and advance human rights objectives in line with the positive developments in ideologies and concepts that establish and promote human rights issues as one of the higher goals of the community of civilized nations.

2. This orientation has been, in fact one of the basic tenets in both domestic and foreign policy of the State of Kuwait since its inception over two and a half centuries ago. Since its creation, the State of Kuwait has sought to set up a society in which human rights and freedoms are preserved. Consequently, legislation giving expression to these fundamental concepts has been enacted over that time and scrupulously implemented. The various pieces of legislation were later synthesized in the Constitution of the State of Kuwait adopted in 1962, one year after independence. The Constitution is in fact an integral document that embodies all evolving precepts and values which the Kuwaiti society believes in, cherishes and puts in practice, and from which have emanated other pieces of legislation that touch on all aspects of the life of the individual and the community in a State where law and constitutional institutions prevail and human rights and fundamental freedoms are always preserved.

3. It has been in such a perspective that the State of Kuwait has sought to build and strengthen its relations with other members of the international community in order to bolster the common pursuit of human rights so that members of the world community may further enjoy development and prosperity. Thus, actions of the State of Kuwait at the international level have invariably revolved around several central themes, most important of which are international conventions and agreements. At present, Kuwait is a party to 13 such instruments, including the Covenant under which this report is submitted. Kuwait ratified this Covenant by its Law No. 12 of 1996 and the Covenant entered into force for Kuwait on 21 August 1996.

4. Pursuant to the obligations emanating from article 40, paragraph 1, of the Covenant, which provides that States Parties to the Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights, and in response to a letter from the Secretary-General of the United Nations of 18 December 1996 requesting that Kuwait submit its initial report under the International Covenant on Civil and Political Rights, the competent authorities of the State of Kuwait are pleased to submit this initial report to the Committee established under article 38 of the International Covenant. This report falls into two parts: an initial part containing general information; and and account of the legislative, judiciary and administrative measures taken by the State of Kuwait to give effect to provisions of the Covenant.

I. INITIAL PART OF THE REPORT

A. The land and the people of Kuwait

5. This section requires detailed and accurate information on the demographic and ethnic situation in Kuwait and its population, in addition to other information that needs to be supplied by the submitting State, in accordance with the guidelines for the initial part of State reports.

6. In order to clarify the position of Kuwait on requirements under this section, it may be recalled that all information expected of Kuwait has been documented in official records issued by the competent authorities of the State. In view of the fact that the above-mentioned documents adequately provide the relevant information, this report shall refer to them as annexes that form an integral part of the report. These documents include:

A booklet by the Ministry of Planning (annex 1) containing data and statistics on the following:

Geographical location;
Climate;
Number of population by nationality, level of education and gender, as shown by the last census, conducted in April 1995;
Government housing programmes and the allocation of housing units among governorates;
Gross national income and expenditure;
Foreign trade, industry, agriculture, fisheries and livestock;
Educational services as to number of schools and the number of students by gender and nationality;
Health services, particularly number of hospitals, hospital beds and number of staff in public and private health sectors.

Statistical bulletins (annex 2):

Annual Bulletin of Virtual Statistics: birth and mortality rates in 1994;
General Census of 1995;
Preliminary and Revised Estimates of National Accounts, 1994-1996;
Monthly Statistical Bulletin, December 1997.

B. General political structure of the State

7. This section deals with certain aspects relating to the political structure of the State, notably the framework of the State, the type of government and the organs of the State.

8. As to the framework of the State and the type of government, Kuwait is an Arab, independent, fully sovereign State, its people are part of the Arab Nation, its religion is Islam and its official language is Arabic. The system of government in Kuwait is democratic, under which sovereignty resides in the people, the source of all powers. Sovereignty is exercised in the manner specified in the Constitution. Justice, liberty and equality are the pillars of society; cooperation and mutual help are the firmest bonds between citizens.

9. As to the type of democratic system, the Constitution has, as indicated in the Explanatory Note (Annotations) of the Constitution, envisaged within the democratic framework a middle road between the parliamentarian and the presidential democracies, leaning more heavily torwards the former since a presidential system is essentially a republican system.

10. Reflecting the principles of true democracy, the regime in Kuwait has adopted the well-established constitutional principle of the separation of powers while providing for their cooperation and ensuring that no one of these powers may relinquish all or part of its mandate as set out in the Constitution. In fact, the Kuwaiti Constitution, made up of five parts, devotes Part IV, itself comprising five chapters, to the matter of "Powers". In "General provisions", this Part declares that the legislative power is vested in the Amir and the National Assembly in accordance with the Constitution and that the executive power is vested in the Amir, the Cabinet and the ministers in the manner specified in the Constitution, while the judicial power is vested in the courts, which exercise it in the name of the Amir within the limits of the Constitution.

11. Chapter II of this Part deals with "the Head of State". It stipulates, inter alia, that the Amir exercises his powers through his ministers and appoints the Prime Minister and relieves him of office. He is the Supreme Commander of the Armed Forces, and he appoints and dismisses officers in accordance with the law. The Amir issues regulations necessary for the execution of laws, as well as regulations necessary for the organization of the public services and administration. The Amir also appoints and dismisses civil and military officials and diplomatic representatives to foreign countries. Other powers exercised by the Amir are also set out in this chapter.

12. Legislative power is also vested in the Amir and the National Assembly. The Assembly is composed of 50 members elected directly by universal suffrage and secret ballot for a term of four calendar years. This is the authority that enacts laws under the Constitution. Article 79 of the Constitution states that no law may be promulgated unless it has been passed by the National Assembly and sanctioned by the Amir. The Assembly, like the Amir, proposes laws, supervises the work of the Government and has the power to approve international agreements concluded by the State of Kuwait and covered by article 70 (2) of the Constitution, being the more important treaties concluded by the State.

13. Chapter III of the Constitution contains the provisions relating to the legislative power. Law No.35 of 1962 on National Assembly Elections contains provisions for the organization of these elections (annex 3).

14. Executive power is assumed by the Amir and the Council of Ministers which has control over the departments of State, formulates the general policy of the Government and pursues its execution and supervises the conduct of work in government departments. Each minister supervises the affairs of his ministry and executes therein the general policy of the Government; he also formulates the directives for the ministry and supervises their execution.

15. Judicial power is vested in the courts, which exercise it in the name of the Amir. The independence of the judiciary is established by the Constitution and by law. The honour of the Judiciary and the integrity and impartiality of judges are the bases of rule and a guarantee of rights and liberties.

16. In accordance with the Constitution, judges, in administering justice, are not subject to any authority. The law guarantees the independence of the judiciary and stipulates the guarantees and provisions relating to judges. The Constitution devotes a separate chapter to the judicial power, containing 12 articles with many provisions that underline the principle of the independence of the judiciary.

17. Law No.23 of 1990 on the Organization of the Judiciary describes the various courts, their level and their formation. It also defines the constitution and terms of reference of the Supreme Judiciary Board, the qualifications for appointments and promotions in the judiciary organs, the duties of judges and the composition and terms of reference of the Office of Public Prosecution. This law was amended by Law No.10 of 1996 to enhance the independence of the judiciary and to provide more immunities and guarantees for judges, thus preserving their dignity and supporting them in the performance of their duties (annex 4).

C. General information

1. The general legal framework within which civil and political rights are protected in the State of Kuwait

18. It should be noted that the political and legal regime of the basic principles and provisions of the rules of human rights applicable in Kuwait has been enshrined in the Kuwaiti Constitution of 11 November 1962. Being the legal basis of the State, the Constitution consecrates this regime throughout its sections, whether they relate to the State and system of government, the fundamental constituents of Kuwaiti society, public rights and duties or the separation and constitutionality of powers. It may thus be said that the Kuwaiti Constitution is indeed the political and legal umbrella of the rules of human rights in Kuwait in general. Under this umbrella several pieces of legislation have been enacted to guarantee human rights in various political, civil, penal, economic, cultural, social and other spheres. It should also be kept in mind that several pieces of Kuwaiti legislation relating to everyday aspects of the life of the people had been promulgated prior to the Constitution, with the object of providing guarantees of justice to individuals in Kuwait, notably the Penal Code and Code of Penal Procedures of 1960.

19. The Document Promulgating the Kuwaiti Constitution enunciates the great attention paid by the Kuwaiti Constitution to human rights. It states that the Constitution is elaborated with the objective of completing the foundations of democratic rule in Kuwait, in pursuit of a better future in which the homeland may enjoy more prosperity and international prestige and its citizens may have more political liberties, equality and social justice, and in order to consolidate the Arab tradition of attachment to individual personal dignity, the interests of the community and the attainment of "shura" (consultation) in government while preserving the integrity of the homeland.

20. It is thus obvious that the Kuwaiti Constitution highlights human rights, and ascribes to them the elevated status they deserve. Most articles of the Constitution express the principle agreed upon by the international community and enshrined in the relevant international instruments, as may be seen below:

(i) Principles of human rights contained in Parts I and II

Sovereignty resides in the people, the source of all powers (art. 6);

Justice, liberty and equality (art. 7);

Protection of the family, motherhood, childhood and youth (art. 9 and 10);

Aid and social security for citizens in old age, sickness or in the event of inability to work (art. 11);

Assurance and promotion by the State of free education (art. 13);

Promotion of science, letters and the arts, and the encouragement of scientific research (art. 14);

The right to health care (art. 15);

The right of the individual to property and the inviolability and protection of public property (art. 16 and 17);

The inviolability of private property. No property shall be expropriated except for the public benefit, under the circumstances and in the manner specified by law and on condition that just compensation is paid (art. 18);

The right to public office (art. 26).

(ii) Principles of human rights contained in Part III

21. This part is devoted to public rights and duties and covers several principles established by international human rights instruments, as follows:

No deprivation or withdrawal of nationality except within the limits prescribed by law (art. 27);

No Kuwaiti may be deported from Kuwait (art. 28);

Equality and non-discrimination on grounds of race, origin, language or religion; all citizens are equal before the law in public rights and duties (art. 29);

Freedoms and rights, such as personal freedom (art. 30); freedom of religion and belief (art. 35); freedom of opinion and scientific research (art. 36); freedom of the press, printing and publishing (art. 37); the right to privacy and inviolability of homes (art. 38); freedom of communication by post, telegraph and telephone; freedom of associations and unions (art. 43) and freedom of assembly (art. 43);

No person shall be arrested, detained, tortured or compelled to reside in a specified place, nor shall the liberty, residence or movement of any person be restricted; and the prohibition of torture and degrading treatment (art. 31);

Nulla poena sine lege: no crime and no penalty may be established except by virtue of the law (art. 32);

An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured (art. 34);

Right to free education at all stages; education is compulsory at the preliminary stages (art. 40);

Right to work (art. 41);

Extradition of political refugees is prohibited (art. 46);

Exemption of small incomes from taxes (art. 48).

(iii) Principles covered by Part IV

22. Chapters I to IV of this part spell out the foundations of the system of government in the State; they also deal with the three powers and the terms of reference and functions of each power. Detailed information on these powers may be found elsewhere in this report.

23. Article 50 emphasizes the principle of the separation of powers.

24. Chapter V underlines certain important principles relating to the judiciary and declares that the impartiality and integrity of judges are the basis of rule and a guarantee of rights and liberties. This chapter also underlines the following principles: the independence and immunity of the judiciary (art. 163) and the right of recourse to the courts (art. 166).

25. From the above, it is clear that the Kuwaiti Constitution embodies several principles that are proclaimed by the Universal Declaration of Human Rights and other relevant international human rights instruments, including the International Covenant on Civil and Political Rights.

26. Further firm guarantees to ensure respect and effective implementation of these rights and freedoms and to safeguard them against any violation were established through the creation of the Constitutional Court by Law No.14 of 1973. This court has the exclusive jurisdiction of interpreting the constitutional provisions and is expected to render decisions in disputes relating to the constitutionality of laws, decrees and by-laws. Decisions of the Constitutional Court are binding on all and sundry, including all other courts.

27. To give effect to the above-mentioned constitutional provisions, the State of Kuwait has enacted the necessary laws to ensure the optimal implementation of these rights, while meticulously seeking to make these laws fair, up-to-date and responsive to contemporary requirements of providing the utmost justice to individuals within the framework of a modern State that respects the rule of law.

28. Furthermore, Kuwait has acceded to a number of international human rights instruments and has made them part of Kuwaiti national laws after the completion of procedures to put them into effect. The following are the latest examples:

Accession to the International Covenant on Civil and Political Rights, by virtue of Law No.12 of 1996, dated 3 April 1996;

Accession to the International Covenant on Economic, Social and Cultural Rights, by virtue of Law No.11 of 1996, dated 3 April 1996;

Accession to the Covention on the Prevention and Punishment of the Crime of Genocide, by virtue of Law No.1 of 1995;

Accession to the Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes Against Humanity; by virtue of Law No.3 of 1995.

2. Judicial or administrative authorities having jurisdiction in matters addressed by the International Covenants

29. In respect of the authorities that have jurisdiction in matters relating to human rights, mention should be made of the fact that article 1 of Decree No. 23 of 1990 on the Organization of the Judiciary, as amended by Law No.10 of 1996, lays down the following two basic principles.

30. First, the courts have all-inclusive jurisdiction to decide on all disputed civil, commercial, administrative and personal status cases as well as penal cases. The thrust of this principle is to maintain a single judiciary framework in the State, thus consecrating the principle of the equality of litigants and avoiding problems arising from uncertainties in the determination of the competent organ.

31. Second, the rules governing the type or degree of court jurisdiction are established by law. No subordinate legislative tool may define or amend such jurisdiction. This principle responds to the provision of article 164 of the Constitution that the law specifies the functions and jurisdiction of the courts.

32. The above-mentioned Law has established the degree and ranking of courts. Article 4 provides for the following categories of courts:

Court of Cassation;
Court of Appeal;
Court of First Instance;
Court of Summary Justice.

3. Remedies available to individuals

33. In respect of remedies available to any individual who claims that any of his rights have been violated in the State of Kuwait, the Constitution and the applicable laws enable any person who claims a violation of any of his rights under the Constitution or applicable laws to bring his suit to any of the Kuwaiti courts. This principle is confirmed by article 166 of the Constitution, which provides that the right of recourse to the courts is guaranteed to all and that the law prescribes the procedure and manner for exercising this right.

Part V of the Constitution also contains a number of general provisions that guarantee the appropriate exercise of this right.

34. The Law No.23 of 1990 on the Organization of the Judiciary also contains a number of clauses on the judiciary power that consolidate the principle of the independence of judges.

35. On the other hand, the Code of Penal Procedures describes the procedures and conditions for penal litigation and assures the litigants of all legal guarantees, such as open trial, the presence of a defence lawyer and other guarantees under Kuwaiti legislation that conform to international standards of justice.

4. Implementation of International Instruments including the International Covenant on Civil and Political Rights in Kuwait

36. It is to be noted under this heading that the implementation of the provisions of the International Covenant on Civil and Political Rights in Kuwait is carried out within the context of the mechanism envisaged in article 70 of the Constitution that declares that:

> "The Amir concludes treaties by decree and transmits them immediately to the National Assembly with the appropriate statement. A treaty has the force of law after it is signed, ratified and published in the Official Gazette.
>
> "However, treaties of peace and alliance, treaties concerning the territory of the State, its natural resources or sovereign rights, or public or private rights of citizens, treaties concerning trade, navigation and residence, and treaties entailing additional expenditure not provided for in the budget, or involving amendment of the laws of Kuwait shall come into force only when provision for this is made by law.
>
> "In no case may treaties include secret provisions contradicting those declared."

This article shows that treaties concluded by the State of Kuwait have the force of law in Kuwait, that they are addressed to all and that their provisions are binding in Kuwaiti courts.

37. It follows that the accession of Kuwait to the International Covenant on Civil and Political Rights, upon the completion of constitutional procedures, has made the International Covenant part of the body of national legal provisions applicable in Kuwait and binding at all levels on the authorities and organs of the country.

D. Information and publicity

38. Under article 70 of the Kuwaiti Constitution quoted above, no treaty becomes effective and binding unless the constitutional procedure has been fulfilled, hence until it has been published in the Official Gazette. The article also exhaustively enumerates the treaties that come into force only when provision for this is made by law.

39. Publication is the last phase in the legislative process and it is intended to provide publicity by the executive organ as a prerequisite for application. Laws are published in the Official Gazette in Arabic within two weeks of their adoption and enter into force one month after publication. This time-frame, however, may be extended or abridged by a specific clause of the law.

40. Upon its publication in the Official Gazette and the expiry of the specified time-limit, a law enters into force and thus becomes binding on all and sundry, whether or not they have knowledge of its publication. Publication is a prerequisite for all kinds of legislation and constitutes a directive to all organs and authorities to implement the law in their respective areas of competence. It is to be noted that in respect of human rights instruments to which Kuwait has acceded, including the International Covenant on Civil and Political Rights, this procedure has been followed and they have been published in the Official Gazette and thus brought to the knowledge of the public.

Article 1

41. Kuwait believes unequivocally in the right of peoples to self-determination as an inalienable right that has been enshrined in the Charter of the United Nations as one of the principal objectives that must be pursued by the United Nations. By virtue of this principle, many countries of the world have attained their independence. The objectives of the Charter also place an obligation on members of the international community to concert their efforts in order to assist other peoples still suffering under the yoke of foreign occupation and to support them in their legitimate struggle to attain their independence.

42. Acting on this principle, Kuwait has taken favourable positions on all resolutions of international forums providing for the right of peoples to self-determination. It has always played an unequivocal and honourable role in supporting the struggle of peoples to attain independence and exercise their right to dispose of their natural wealth and economic resources.

43. The Kuwaiti Constitution affirms that all natural resources and all revenues therefrom are the property of the State, and that the State shall ensure their preservation and proper exploitation, due regard being given to the requirements of State security and the national economy.

44. The Constitution further affirms that the national economy shall be based on social justice and is founded on fair cooperation between public and private activities; its aims shall be economic development, increase of productivity, improvement of the standard of living and achievement of prosperity for its citizens. It also proclaims that property, capital and work are fundamental constituents of the social structure of the State and of the national wealth; all of them are individual rights with a social function, regulated by law.

45. The Kuwaiti Constitution provides for the right to private property, that no one shall be prevented from disposing of his property except within the limits of the law; and that no property shall be expropriated except for the public benefit under the circumstances and in the manner specified by the law, and on condition that just compensation is paid. In Kuwait, public property is inviolable and its protection is the duty of every citizen.

Article 2

46. Kuwait wishes to affirm that Kuwaiti society, whose pillars are justice and equality, strongly rejects all forms of discrimination and segregation; it makes no distinction between men and women, for all citizens enjoy all rights and freedoms guaranteed by the Constitution and applicable laws, without distinction on grounds of race, colour, religion or age. This idea is underlined by article 7 of the Constitution, which enumerates equality among the pillars of the society. Earlier in the Constitution, the Preamble speaks of equality as one of the foundations of Kuwaiti society.

47. Article 29 elaborates on the principle of equality, stating that all people "are equal in human dignity and in public rights and duties before the law without distinction as to race, origin, language or religion". In this context, it may be instructive to quote the Constitution's Explanatory Note (Annotations) on article 7:

> "This article establishes the principle of equality in rights and duties in general. It then proceeds to specify the most important application of this principle by stating that there shall be no distinction ... on grounds of race, origin, language or religion. The drafters declined the inclusion of "colour" or "wealth" as grounds for distinction, although similar terms are used in the Universal Declaration of Human Rights, since there is not the least hint of racial discrimination in the country; besides, the text of the article itself removes any such possibility. Discrimination on grounds of wealth is also non-existent in Kuwaiti society, thus obviating the need to mention it specifically."

48. It is also worth noting that the rights of aliens are guaranteed in view of the fact that the Constitution is based on respect for human rights. However, this does not cover the rights that are exclusively guaranteed to citizens, such as the rights of suffrage, election to public office, free education and ownership of property, which are due to citizens, to the exclusion of aliens. Otherwise, an alien in the State of Kuwait enjoys the rights and freedoms proclaimed by the Constitution for all people: thus, an alien enjoys liberty, personal security, humane treatment, equality before courts and other judicial organs as well as all legal guarantees provided by the Kuwaiti laws in this respect. An alien also has the freedom to choose his work, the freedom to enter and leave the country, freedom of belief and to perform his religious rituals and all other rights that Kuwaiti laws have established for Kuwaiti citizens and for residents, subject to no other restrictions than those contained in these laws.

49. As to the right of a person whose rights and freedoms recognized in the Covenant are violated to have remedy as may be determined by competent judicial administrative or legislative authorities, any person in the State of Kuwait has the constitutional right of recourse to courts in the case of such violation. Article 166 of the Constitution guarantees this right of recourse.

50. In this context, the State of Kuwait wishes to recall its explanatory declaration made at the time of accession to the International Covenant on Civil and Political Rights in respect of article 2.1 and article 3. In this declaration, the State of Kuwait, while supporting the lofty principles enunciated in these two articles, which are in conformity with the provisions of the Kuwaiti Constitution, particularly article 2, indicated that the exercise of

the rights contained in these articles shall be subject to limits established by Kuwaiti law.

Article 3

51. It should be noted that Part II of the Kuwaiti Constitution opens with an article stipulating that equality is one of the pillars of Kuwaiti society. Equality of all citizens is a fundamental basis of Kuwaiti society. All individuals are ensured equality without distinction on grounds of gender or any other grounds. Reference has already been made above to article 7 of the Constitution, which affirms the principle of justice and equality.

52. To consolidate further the principle of equality enunciated in the Constitution, article 27 bars any revision to the provisions relating to the principles of liberty and equality unless such revision is intended to increase the guarantees of liberty and equality. This in itself is evidence of the importance attached by Kuwaiti law-makers to the principle of equality.

53. Furthermore, article 29 elaborates on the manifestations of equality: it provides that all people are equal in human dignity and in public rights and duties before the law. It may be said here that the Kuwaiti Constitution has established the principle of equality in certain articles without having to mention the term as such. For example, article 13 states that education is a fundamental requisite for the progress of society and is assured and promoted by the State. Article 11 also specifies that the State ensures aid for all citizens in old age, sickness or inability to work, and it also provides them with social security services and social aid. Under article 41 every Kuwaiti has the right to work and to choose the type of his work. There are similar articles in Parts II and III of the Constitution, which guarantee such rights as education, work and social aid to all Kuwaitis, without distinction between men and women.

54. The State of Kuwait has devoted major attention to the Kuwaiti female population, thus creating an enlightened workforce in various walks of life. The Constitution has consecrated the right of women to work and to choose their work, in addition to their freedom to engage in all business and professional activities and occupations. The State, for its part, has facilitated the access of women to all levels of education, as well as their assumption of public functions on an equal footing with men. Women, however, enjoy certain entitlements to enable them to fulfil their role as mothers. Thus, they may have special "delivery" and maternity leave on full pay, in addition to other leave to tend to their infants, while maintaining their jobs and seniority. A woman also has the right to leave on half pay when she accompanies her spouse to a duty station at one of the Kuwaiti diplomatic missions abroad, and the right to return to her post. The above rights are part of the State policy of pursuing the objective of the enjoyment and realization by women of their rights within the general context of the pursuit of development and progress.

55. It may be noted in particular that women accounted for 28 per cent of the national workforce in 1996 in different sectors. This fact reflects an awareness by the Kuwaiti society of the role of women and the need for their effective involvement in the process of social and economic development. (Annex 5 to this report contains a table showing the number and percentage of women employed in the sector of education.)

56. The role of women in the service of society is not limited to their presence in the salaried work force but extends to voluntary service through non-governmental organizations. These organizations are active in various cultural, social, creative and professional fields, as well as being concerned with issues relating to women and the resolution of those issues in cooperation with governmental offices and non-governmental associations.

57. The above provides further evidence that the Kuwaiti society does not discriminate against any of its members, as all citizens are equal in public rights and duties without distinction as to gender. Kuwait has thus made a point of joining international conventions on discrimination, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. It is now in the process of acceding to the Convention on the Nationality of Married Women and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. Kuwait has also made a point of translating the provisions of these conventions into practical terms. Its policy in the areas of equality and non-discrimination is so clear that no legislation whatsoever contains any clause that contravenes its obligations under international instruments that prohibit discrimination and advocate equality of all people without distinction on grounds of gender.

Article 4

58. The State of Kuwait wishes to make an initial statement in respect of this article. According to nationally and internationally agreed human rights laws, the cases in which States may resort to emergency laws to cope with exceptional circumstances are by their nature an exception to the general rule; however, such an exception must remain narrow and confined within time limits. It should not be invoked extensively, for then it may well constitute a violation of the basic rights of individuals. The proclamation of emergency laws means, as declared in the Annotations to the Kuwaiti Code of Martial Law of 1967, that the country moves from a state of normalcy with which people are familiar to an exceptional situation that may be necessary to cope with certain requirements and exigencies.

59. Kuwait has always made a point of implementing the concepts of the supremacy of law and legal institutions which emanate from respect of human rights. Given this fundamental policy, Kuwait has had to proclaim martial law on only two occasions in its history. The first instance was in 1967 and lasted for seven months. The second instance occurred immediately after the barbaric Iraqi occupation and lasted for a period of four months only. In this second instance, martial law was applied only on a very limited scale and in accordance with the requirements of applicable humanitarian criteria provided for in the international instruments in force. These provisions include article 4 of the International Covenant on Civil and Political Rights, which provides that in time of an officially declared national emergency, States may take measures derogating from their obligations under the Covenant, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination on the ground of race, colour, sex, language or religion.

60. It should be noted that Kuwait abided by the terms of this article, even though at that time it was not yet a party to the Covenant. It may be concluded, therefore, that the Kuwaiti experience in coping with that situation remains one

of the most laudable international instances. All relevant international bodies have confirmed this conclusion.

61. It may be useful to shed more light on this Kuwaiti experience by elaborating further on the following two points: (i) the position of Kuwaiti legislation on the matter of martial law; and (ii) the actual measures taken by the State of Kuwait during the period of martial law, and the positive features of that period.

62. With regard to the position of Kuwait on martial law, it should be noted that this legislation, including notably the Constitution, has taken into account the fact that the country may encounter exceptional and extraordinary situations that require extraordinary and exceptional measures. In this context, article 69 of the Constitution declares:

> "The Amir proclaims martial law in cases of necessity determined by law and in accordance with the procedure specified therein. The proclamation of martial law shall be by decree. Such decree is referred to the National Assembly within the fifteen days following its issue, for a decision on the future of martial law. If the proclamation takes place during the period the National Assembly is dissolved, it is to be referred to the new Assembly at its first sitting.
>
> "Martial Law may not continue unless a decision to that effect is made by a majority vote of the members constituting the Assembly.
>
> "In all cases, the matter is referred to the National Assembly, in accordance with the foregoing procedure, every three months."

63. The Annotations to the Constitution explain that, under article 69, martial law is proclaimed by decree in view of the need for expediency in matters relating to defence. However, this provision, like all other similar provisions of the Constitution, does not preclude the Head of Government and the Government having prior consultations with the National Assembly, whenever feasible, although the proclamation of martial law is left entirely to the discretion of the Amir and his Government. In fact, this freedom to act may be even preferred, when the need arises, in view of the popular acceptance of the Government.

64. Examination of the article and its annotation clearly indicate that both texts have been extremely careful to observe the required legal criteria to ensure that martial law is applied within the restrictions imposed by legal institutions.

65. At a certain juncture, circumstances made it imperative to enact a national law, Law No. 22 of 1979, on the application of martial law. Later, Law No. 65 of 1980 on General Mobilization was enacted in 1980. A glance at the earlier law reveals that it is made up of 12 articles and that the first article defines the circumstances under which martial law may be declared as the following:

> When security and public order in the country or part of the country are in jeopardy;

In the case of an armed aggression or a threat of armed aggression; or of internal turmoil;

To ensure the safety of the Kuwaiti armed forces and the protection of their logistics and communication lines, movements and military operations beyond the Kuwaiti borders.

Article 2 provides that martial law shall be proclaimed by decree and specifies the elements that shall be covered by such decree. Article 3 describes the measures that may be taken by the authority administering martial law. Article 4 provides that orders and restrictions under martial law shall be issued by the administering authority through the police or armed forces and that every public servant shall assist them in the performance of their duties. Article 5 specifies the penalties for any violation of measures taken under martial law. Article 6 names the court or courts that are competent to hand down penalties prescribed in this law. Article 7 contains provisions for the constitution of such a court. Under this article, a court shall be composed of a judge of a court of first instance, acting as president, and two army officers of the rank of captain or higher. Articles 9, 10 and 11 address points relevant to the implementation of verdicts delivered by the court. Article 9 states that the organs entrusted with the implementation of these verdicts may, at any time, apply a harsher penalty or suspend the execution of the penalty. Article 11 states that sentences passed by a martial court shall be carried out in accordance with the same procedure as in the case of sentences by a normal penal court, unless otherwise specified by the authority administering the martial law (annex 6).

Legal and executive measures taken by the State of Kuwait to deal with situations arising from martial law, and the positive features of that period

66. It is well known that the State of Kuwait experienced an unstable security situation immediately after liberation from the barbaric occupation, which lasted for more than seven months. The legitimate government was forced to remain in exile for a period and was therefore absent from the country as a result of those and other abnormal conditions.

67. In view of those circumstances, Decree No. 14 of 1991 proclaiming Martial Law was issued on 26 February 1991. Article 1 of that Decree stated that martial law was declared in Kuwait for a period of three months. Subsequently, several orders and decisions to implement this decree were issued, including:

(a) Order establishing a Central Security Command under the Martial Law Administering Authority;

(b) Order announcing a curfew in Kuwait;

(c) Decision by the Council of Ministers authorizing the Military Governor General to refer certain crimes normally punishable under the Civil Penal Code to the military courts;

(d) Order on modalities and conditions of search;

(e) Announcement lifting the curfew;

(f) Order by the Military Governor General creating a special office to review sentences delivered by the martial courts.

68. To elaborate on those orders and decisions, the first order provided for the establishment of a Central Command for Security Affairs under the Military Governor General to coordinate of the activities of the Army, the Police and the National Guard in matters involving the security of the State and the safety of citizens, and to follow up the implementation of the decisions of the Military Governor General on security.

69. The second order installing a curfew provided that the curfew was to be imposed in all parts of Kuwait from 10 p.m. to 4 a.m., except for holders of a written authorization issued by the Minister of the Interior. The order prescribed the penalties applicable for violations of its provisions: a prison term of no more than three months and a fine of no more than KD 100, or either.

70. A decision of the Council of Ministers authorized the Military Governor General to refer certain crimes under public law to the military courts. These crimes were those set out in amendments to Penal Law No. 16 of 1960, and crimes involving explosives, arms, ammunition and the forgery of passports and civil identity cards.

71. The order lifting the curfew was issued on 17 March 1991, 12 days after the Military Governor General issued the order imposing the curfew. It may be appropriate to underline certain points relating to the later order. The preamble to it stated that although Kuwait was going through a period of martial law that justified the imposition of restrictions on the freedom of citizens and residents in order to ensure security and safety throughout the country, the Martial Law Authority was taking all possible measures to provide to citizens a measure of freedom and alleviation of hardship. The authorities did not wish to continue restricting the freedom of movement of citizens and thus the Military Governor issued the order lifting the curfew.

72. The above is an eloquent indication of the wisdom and liberality of the Kuwaiti leadership which cherishes the freedom and dignity of citizens and of the fact that this leadership does not seek to impose on the citizens measures that may harm their interests or restrict their freedoms except under very pressing circumstances and only for the duration of such circumstances.

73. To provide further judicial and legal guarantees for those persons referred to martial courts on charges of collaboration with the Iraqi occupation forces, the Military Governor General issued Order No. 9 of 1991 creating a special office under his authority to review sentences delivered by those courts. Article 2 of this Order provided that the said Office would be composed of a number of judges of the Appeals Court, to be named by the Minister of Justice. Article 3 of the Order provided that the functions of the Office would consist of reviewing sentences passed by a martial court to ascertain that they were consistent with the law. Conclusions were to be submitted by the Minister of Justice, along with his own opinion, to the Military Governor General for approval, substitution by a heavier or a lighter penalty or suspension of the sentences. Paragraph 2 of the same article stipulated that the Office was also to examine petitions submitted by those convicted by martial courts to sentences already approved by the Military Governor General. Opinions of the Office were to be submitted to the Military Governor General for decision.

74. In the light of the foregoing, it is important to note a number of positive features of the period of martial law which underscore the respect and the protection given by the Kuwaiti authorities to human rights and fundamental freedoms. These features may be summed up as follows:

(a) The first point that may be raised is the fact that the Decree of 26 February, 1991 entrusted the Prime Minister with the responsibility of governing the country as a Military Governor General. The assignment of this task to a civilian official is itself a notable guarantee.

(b) As to the duration of martial law and of the curfew, the former lasted four months, while the latter lasted for 12 days only, in spite of the extraordinary security conditions in the country.

(c) Measures were taken to ensure basic guarantees and judicial rights to individuals, as was manifest in several provisions. The following are some examples:

As to guarantees, it should be noted that while article 1 of the Order of the Military Governor General authorized the army, the police and the National Guard to search persons and places at any time, night or day, article 2 of the same order provided an important restriction to article 1, by absolutely prohibiting the search of residential places without a written warrant from a member of the Military Parquet. In other words, it confined the search measure to the authority of members of the judiciary branch. That was, in itself, a basic guarantee that was observed during this period.

As to the judicial guarantees before the martial court, the Kuwaiti legislation made a point of providing those guarantees in order not to allow of any transgression or arbitrary action. These guarantees were evident in several provisions, including the following.

The constitution of the martial courts

75. The courts were not solely made up of military personnel but comprised members of the judiciary branch.

Judicial rights for defendants before the martial courts

76. The Kuwaiti legislation assured those tried by martial courts the right to obtain the assistance of defence attorneys. When defendants could not afford such counsel, the court was obliged to retain lawyers on their behalf. Other trial procedures conformed with the rules provided in the normal Code of Penal Procedures.

Open trials

77. Trials were public and held in the presence of representatives of local and foreign media and of humanitarian organizations concerned with human rights.

78. Furthermore, the verdicts of these courts were not without recourse. Military Order No. 9 established an office to review the rulings of the martial courts. The Order provided for judicial rights, for example, restricting the

composition of the Office to members from the highest level of the judiciary branch, by stipulating that the Office was to be composed of a number of judges from the Appeals Court. The functions of this Office are summed up above.

79. Other measures provided that the rulings of the martial courts were not final. After the expiry of martial law, those rulings that were not submitted to the Review Office were referred to the State Security Court. Rulings referred to the Office were commuted in 16 instances.

80. Finally, it should be noted that a number of those convicted by the martial courts did not complete their sentence, as they were pardoned under an Amiri amnesty decree.

Article 5

81. The State of Kuwait does not interpret in any way provisions in this Covenant as implying any right to engage in any activity aimed at the destruction of any of the rights and freedoms recognized in the Covenant.

82. Reference has already been made above to article 175 of the Constitution, which states that no revision to the Constitution may be proposed except to increase the guarantees of liberty and equality.

Article 6

83. Since the right to life is the most important right and constitutes the source of all other rights, Kuwaiti law protects this right and punishes any transgression in its respect.

84. To elaborate on the position of the Kuwaiti legislation on the right to life, it may be noted that the Kuwaiti Penal Code considers abortion a punishable crime. Article 174 of this Code punishes any person who administers to any woman, whether pregnant or not, with or without her consent, or causes the administration of, drugs or any other harmful substance, or uses force or any other means, with the intention of causing abortion. The penalty is aggravated when the act is committed by a medical doctor, a pharmacist, a midwife or any other person engaged in a support service of the medical or pharmacological professions.

85. Article 159 of the Code also punishes by a prison term not exceeding five years, a woman who wilfully kills her infant upon giving birth in order to cover an illicit relationship. A pregnant woman is also punished by a prison term not exceeding 10 years and a fine stipulated in article 176 if she takes a drug or any other harmful substance or uses force or any other means with the intention of causing herself an abortion and entailing actual abortion. The law also provides for a penalty of imprisonment and fine for whoever knowingly sells, prepares, offers or disposes in any way of a substance that is used to cause abortion.

86. By establishing the above-mentioned penalties, Kuwaiti law seeks to protect human life and affirm the right to life. Furthermore, the Government, represented by the Ministry of Health, provides all preventive and curative services in order to protect citizens, including children, from diseases and to preserve their life.

87. In the State of Kuwait, the Ministry of Health is the competent organ that oversees all institutions engaged in any activity related to public health. It also supervises all persons employed in the field of health services in order to ensure the provision of optimal quality service.

88. Further to the above, the Government has set up centres for child and maternity services in all areas of Kuwait for the purpose of carrying out plans and programmes aimed at the protection of children from diseases and epidemics that may adversely affect their life or their growth. The Government also organizes awareness campaigns directed at all sectors of society, in order to sensitize citizens to public health hazards resulting from diseases. The last such campaign was the National Polio Prevention Campaign, carried out in two phases and reaching all Kuwaiti children.

89. In respect of primary health services, the State of Kuwait has been especially concerned with reducing infant mortality rates and eliminating causes of infant mortality. As a result, infant mortality rates went down in 1994 to 11.2 per thousand.

90. As to measures taken by the State to eliminate malnutrition and epidemic diseases, all preventive and treatment services, including vaccination and immunization, are offered free of charge, at both primary health care centres and hospitals. As a result, no pathological cases, such as polio and diphtheria, have been reported among children over the last few years. The incidence of other infectious diseases has dramatically declined.

91. In the case of nutrition, the State pays special attention to child nutrition and the provision of a balanced diet to children, especially at schools; consequently, no cases of malnutrition among school children have been reported. The State also provides clean drinking water to the whole population and supplies water to homes.

92. In order to spread sound health precepts among citizens and to sensitize the population as to the risks of disease, the Ministry of Health has produced brochures and booklets containing information on ways and means for the prevention and treatment of diseases. This material is distributed free of charge at health centres and schools. The Ministry has also organized lectures and seminars for school children at various levels to raise their awareness and to provide useful guidance in matters relating to public health.

93. In addition to efforts by the Ministry of Health in this area, the State has also set up an Endowment Fund for Health Development as an organ of the Secretariat General of Endowments (Awqaf). Under the slogan "Knowledge is the road to prevention", the Fund raises health awareness among the population and publishes booklets containing relevant information on some diseases and on ways to prevent them.

94. Efforts to raise awareness about and to caution against serious and epidemic diseases in order to protect human life are not confined to those made by the Ministry of Public Health. Other bodies, such as community associations, make valuable contributions in this area. Among such associations that play an active role in spreading health awareness mention may be made of the Kuwaiti Medical Society and the Fund for the Assistance of Patients.

95. In this context, Kuwait wishes to refer to a report prepared by UNICEF, which declares Kuwait to be one of the leading countries of the world in the areas of child and health care in particular. It also points out that the State of Kuwait has achieved concrete results in the areas of protection of children and women and has succeeded in reducing child mortality rates. The report also pays tribute to the high level and quality of health care provided by the State of Kuwait. Although the report sounds a warning about crimes against women at the global level, it does not make any mention of the existence of such crimes in Kuwait.

96. Measures and action taken to prevent the disappearance of persons will be discussed below in the context of the commentaries under article 9.

97. In reference to the obligation stipulated in paragraph 3 of this article, the State of Kuwait, as a matter of policy, recognizes the rights of all peoples to live in peace and concurs that the use or the threat of use of force by any State against another State should be prohibited. It also deems that the prevention of war, genocide and mass violence constitutes the most important basis and guarantee for the consecration of the right to life. The Kuwaiti Constitution has affirmed these principles. Thus, article 157 states that peace is the aim of the State and the safeguard of the integrity of the country, which is part of the integrity of the Arab world, is a trust devolving upon every citizen.

98. For this reason, the creation of the armed forces and public security forces has been made an exclusive prerogative of the State: it alone forms, organizes and lays down the objectives of the armed forces and other forces of public security, such as the police. Article 3 of Law No. 32 of 1967 on the Armed Forces establishes the principle that "the Army is an armed military force that undertakes the defense of the borders of the country and safeguards its territorial integrity". The Kuwaiti Ministry of Defence undertakes all matters pertaining to the defence of the country and to the armed forces, provides all the means for defence and takes all necessary measures for the discharge of these duties. It is thus apparent that the Kuwaiti armed forces have been created and organized in order to defend the country and safeguard the national borders and not to undertake any acts of aggression that are prohibited by all laws.

99. The State of Kuwait deems that crimes against humanity, including the crime of genocide, are the most serious crimes under international law. The punishment of these crimes is a vital element contributing to the prevention of such crimes, the protection of human rights and fundamental freedoms, the promotion of cooperation among peoples and the consolidation of international peace and security. Kuwait equally deems that the crime of genocide is at variance with the purposes and objectives of the United Nations. In line with these convictions, Kuwait has acceded to the Convention on the Prevention and Punishment of the Crime of Genocide, by its Law No. 1 of 1995 issued on 3 January 1995. It has also acceded, by virtue of Law No. 3 of 1995 issued on 3 January 1995, to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

100. As for the death penalty, paragraphs 2, 3 and 5 of this article treat it as a penalty that may be imposed only for the most serious crimes, but shall not be imposed on persons below 18 years of age and shall

101. It is to be noted in this respect that the Kuwaiti law adopts this penalty and has included it among other penalties for certain crimes out of the conviction of the Kuwaiti law-makers that it constitutes a legitimate and just penalty for certain acts that qualify as capital crimes. Kuwaiti law, however, establishes certain guarantees in respect of this penalty.

102. First, such a penalty is passed only by the judiciary organs, and those are renowned for their impartiality and independence. Secondly, defendants are assured of all judicial guarantees in conformity with relevant international standards, including notably article 6 of the International Covenant on Civil and Political Rights.

103. According to the Penal Procedures Code, all degrees of judicial hearing must be exhausted before the implementation of the death penalty. Any criminal court delivering a death penalty is required to automatically refer its own sentence to the Court of Appeals, even if the convicted person has not taken action to appeal the sentence (art. 211). The Kuwaiti law-makers have thus made this penalty subject to several guarantees to ensure that the penalty is justly imposed and to ascertain that the evidence in the given case justifies such a sentence. By taking such measures, the law-makers seek to protect the rights of the society in which a crime punishable by this penalty has taken place, bearing in mind that such crimes may indeed harm many members of the society.

104. As to the right of a person sentenced to death to seek pardon or commutation of the sentence, established in article 6, paragraph 4, of the Covenant, it is noted that the Kuwaiti Constitution has provided for such eventuality. Article 75 of the Constitution states that the Amir may, by decree, grant a pardon or commute a sentence. Furthermore, article 60 of the Penal Code states that no death penalty shall be implemented unless the Amir has ratified the sentence. The Amir, according to this article, may, at his own discretion, grant amnesty or commute the sentence. Again, article 217 of the Penal Procedures Code states that a death sentence may not be implemented except after ratification by the Amir; a person sentenced to death shall be placed in prison until the Amir has reached his decision to ratify or commute the sentence or to grant pardon.

105. The Kuwaiti law-makers have thus provided such guarantees to those sentenced to death as to make sure that this capital punishment is applied only to those who have deserved it. These safeguards have in fact been applied in several cases. During the period of martial law, this sentence was delivered to collaborators with the Iraqi occupation forces. However, in several cases the penalty was commuted by virtue of Amiri decrees to prison terms that varied in length from case to case.

106. The commutation of the death sentence mentioned above is clear evidence that the State does not resort to this capital punishment except in very serious circumstances that warrant such a sentence.

107. Article 6, paragraph 5, of the Covenant stipulates that a sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women. In this respect, article 20 of the Kuwaiti Penal Code No. 16 of 1960 provides that when a juvenile who has completed 14 years but has not completed 18 years of age commits a crime punishable by the death sentence, the judge shall render a term of imprisonment of no more than 15 years. Article 59 of the same code provides that when a woman

sentenced to death is pregnant and delivers a live newborn, the death sentence shall be commuted to a life sentence. Article 14 of Law No. 3 of 1983 on Juveniles states that when a juvenile commits a crime punishable by a death or a life sentence, the judge shall deliver an imprisonment term of no more than 10 years. Article 218 of the Penal Procedures Code stipulates that when a woman sentenced to death is pregnant and delivers a live infant, the death sentence shall be suspended and returned to the court which has passed the death sentence to commute it to a term of life imprisonment.

108. The provisions cited above indicate that, for humanitarian and social considerations, the Kuwaiti law-makers have made the point that the death penalty shall not be carried out on pregnant women nor shall it be applied to juveniles, in view of their circumstances and young age. It shall be noted that there has never been an instance of a deviation from these provisions in Kuwaiti courts, either under normal or extraordinary circumstances.

Article 7

109. This article imposes on States Parties a general obligation that no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. In the context of Kuwait's implementation of this article, this report underlines the fact that the general policy of the State of Kuwait seeks to protect and consolidate human rights and to remove anything that may lead to their violation. Both the Constitution and the relevant laws of Kuwait contain explicit and categorical provisions that prohibit these inhumane practices. Efforts to combat these practices should not be confined to national action by individual States but should be extended to ensure international cooperation. Such are the beliefs and pursuits of the State of Kuwait.

110. To clarify the position of the Constitution and the laws of Kuwait on the question of torture, it is noted that article 31 of the Constitution provides that "no person shall be arrested, detained, searched, or compelled to reside in a specific place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of the law" and that "no person shall be subjected to torture or to degrading treatment". Article 34 also provides that "an accused person is presumed innocent until proven guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured" and that "the infliction of physical or moral injury on an accused person is prohibited".

111. To further clarify this constitutional position, the Annotations to the Constitution indicate that paragraph 2 of article 31 of the Constitution provides that human beings whom God the Almighty has graced with dignity shall not be subjected to torture or degrading treatment. "Human beings" here are those innocent persons who are not convicted; if a person is convicted through the established legal and judicial process, the matter then becomes that of a punishment for a crime, and is not a matter of torture or degradation. This punishment is subject to guarantees contained in articles 32, 33 and 34 of the Constitution. It is not essential that the Constitution should make a specific reference to inhumane punishment, although such reference is found in the Covenant, since this kind of punishment is so unknown in the Kuwaiti society in the first place, and is so unlikely to exist in the future, that there is no need to spell it out. Thus, the absence of such reference confirms that "inhumane punishment" is inherently prohibited.

112. In the same spirit as that of the constitutional provisions, the Kuwaiti Penal Code contains several clauses prohibiting torture and inhumane practices, as may be seen in articles 53, 54 and 55 of Law No. 31 of 1970 amending some provisions of the Penal Code No. 16 of 1960. The articles specify the penalties to be applied in the case of any public servant who tortures an accused person, instructs that a sentenced person be punished by a harsher penalty than that passed by a court, or enters the residence of any person without his consent in circumstances other than those specified by law.

113. Article 53 states that a term of imprisonment of no more than five years and/or a fine of no more than KD 500, shall be applied to any public official or servant who tortures or orders the torture of an accused person, a witness or an expert to force him to confess to a crime, or to make a certain statement or to give information in respect to a crime. If such torture is conducive to or in conjunction with an act punishable by a higher penalty, this latter penalty shall apply. If torture leads to death, the penalty specified by the law for first-degree murder shall apply.

114. Article 54 provides that any public official, or any person assigned to public service, who punishes or gives orders to punish a sentenced person with a penalty higher than the legally delivered sentence or with a penalty that was not legally delivered shall be punished by a term of imprisonment of no more than five years and/or a fine of no more than KD 500.

115. Article 56 provides that any public official or servant, or any person assigned to public service, who, on the strength of his public function, applies cruelty to others in such a way as not to cause injury to their honour or to cause physical pain shall be punished by a term of imprisonment for a period of no more than three years and/or a fine of no more than KD 250.

116. To complement the above-mentioned legal framework, articles 120, 121 and 125 of the Kuwaiti Penal Code address the punishment of public officials who cause harm or injury to others. Article 120 provides that any public official who uses the authority of his office to wilfully cause damage to others shall be punished by a term of imprisonment for no more than three years and/or a fine of no more than 3,000 rupees. Article 121 provides that any public official who, in the performance of his duties, uses cruelty against others, or compels others to perform work in a manner other than that specified by law, shall be punished by a term of imprisonment of no more than one year and/or a fine of no more than 1,000 rupees. Article 125 provides that any public official who uses the authority vested in him by his function to coerce an individual to sell or dispose of his property or to relinquish a right, whether in favour of the official or of a third person, shall be punished by a term of imprisonment of no more than three years and/or a fine of no more than 3,000 rupees. In all cases, the official shall be dismissed from public service.

117. In addition to the above provisions which deal with the penalties for the qualified acts mentioned therein, the Kuwaiti Penal Code goes even farther to confer maximum safeguards with respect to inflicting physical harm or abusing the inviolability of the human person in any way. Articles 160 to 164 and article 166 of the Penal Code qualify such acts as criminal acts. Article 160 provides that any person who beats or wounds another person, causes him bodily harm or abuses the inviolability of his person in any visible way shall be punished by a term of imprisonment of no more than two years and/or a fine of no more than 2,000 rupees. Article 161 provides that any person who inflicts a

serious injury on another person by means of aiming any sort of projectile, stabbing with a knife, or any other dangerous tool, throwing a caustic fluid or administering such a fluid or any explosive material with the intent of causing bodily harm, or administering an opiate, shall be punished by a term of imprisonment of no more than 10 years, and an additional penalty of no more than 10,000 rupees may be delivered. Article 162 stipulates that any person who causes bodily harm to another person that results in permanent deformity shall be punished by a term of imprisonment of no more than 10 years and an additional discretionary fine of no more than 10,000 rupees. A term of imprisonment of no more than five years and/or a fine of no more than 5,000 rupees shall be imposed if the act of assault has caused the victim severe physical pain or incapacitated him from using one or more of his organs in a natural way for more than 30 days, but has not caused permanent deformity. Article 163 stipulates that any person who commits an act of minor assault that does not reach the level of gravity of the acts described in the preceding articles, shall be punished by a prison term of no more than three months and/or a fine of no more than 300 rupees. Article 164 stipulates that any person who unintentionally causes a wound or a visible harm in another person through wanton, excessive, or negligent behaviour, through lack of caution or through failure to abide by regulations, shall be punished by a term of imprisonment for no more than one year and/or a fine of no more than 1000 rupees.

118. The law also makes it a crime to cause any harm to physical integrity. Thus it punishes deliberate or wanton refusal to provide vital means of maintenance in any way, even if it is through a restriction of liberty, to a person when the offender is legally bound to do so and the refusal to do so has resulted in any harm. This is the substance of article 166 of the Penal Code, which stipulates that a person who is legally under obligation to provide vital sustenance to another person unable, because of age, sickness, mental imbalance or confinement, to provide for himself, whether the obligation emanates from a direct legal imposition, a contract or a legitimate or illegitimate act, and intentionally fails to fulfil this obligation and this failure has been conducive to the death or physical injury of the victim, shall be punished by the penalties specified in articles 149, 150, 152, 160, 162 and 163, in proportion to the intent of the offender and the gravity of the injury. When the failure results from negligence rather than intent, penalties specified in articles 154 and 164 shall apply.

119. The Criminal Procedures Code is especially relevant to the protection of human rights and fundamental freedoms. This Code contains adequate guarantees to ensure maximum judicial justice in the course of penal procedures against any person. In this Code, we find several clauses that prohibit torture in the course of the penal procedures against an accused person and that declare as inadmissible confessions obtained under torture.

120. In respect of the ban on recourse to torture in the course of penal procedures against an accused person, article 12 of this Code provides that an investigating officer, or any other person having judicial or prosecutorial function may not resort to torture or coercion to obtain a statement from an accused person or a witness or to prevent making a statement in the course of a trial, an investigation or an inquiry; any person who commits such an act shall be punished in accordance with the relevant provisions of the Penal Code.

121. As to the inadmissibility of statements and confessions made by an accused person under torture, article 159 stipulates that if a court determines that a

statement or a confession is made by a defendant as a result of torture or coercion, the court shall treat such statement or confession as invalid and devoid of all merit as evidence.

122. Article 158 provides that an accused person may not be forced to make statements under oath or coerced in any way to make certain statements.

123. To give a complete picture of the position of Kuwaiti legislation on the question of the inviolability and protection of the human person, this protection is extended to any person deprived of liberty. A person who is in detention is covered by legal protection, as stipulated in articles 224, 226 and 227 of the Kuwaiti Penal Procedures Code. Article 224 states that a prison warden or any of his subordinate officers may not admit any person to be committed to the premises without a written authorization from a competent organ or the verdict of the court with a writ of execution of sentence, and that a person held in prison shall not under any circumstance remain therein beyond the term specified in the writ of execution of sentence. Article 226 provides that a person may not be arrested or detained without a valid warrant from the competent authorities and that arrest or detention shall be under the conditions, and in accordance with the procedures, stipulated by the law. A detained or imprisoned person may not be kept in any place other than places of confinement specified for this purpose under the laws and regulations in force. Article 227 of the same Code provides that when the investigating officer is informed that a person is unduly arrested, he shall open an investigation forthwith, shall move to the place where such person is held and order his release. An abducted person, or a minor who is unduly taken away from his legal guardian or trustee, shall be considered as detained.

124. Article 18 of the Prisons Law No. 26 of 1962 provides that no person shall be placed in a prison without a written order from the competent authority, and no person shall be held in prison beyond the date indicated by such order.

125. With respect to the treatment of detainees and measures to guarantee their rights to receive visits and to have communication with others, the position of Kuwaiti legislation is defined by the relevant constitutional rule that provides for personal liberty and the inadmissibility of arresting, detaining, searching or compelling a person to reside in a specific place or restricting his liberty to choose his place of residence or his liberty of movement, except in accordance with the provisions of the law. Thus, article 29 of the Constitution declares that "personal liberty is guaranteed". Article 30 of the Constitution states that "no person shall be arrested, detained, searched or compelled to reside in a specific place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of the law".

126. Pursuant to this constitutional norm, the relevant Kuwaiti legislation, namely, the Penal Procedures and Trials Code provides the legal guarantees that ensure those rights and that need to be observed in the course of any legal action that may entail a restriction of the freedom of movement or residence. To this end, article 60 makes it obligatory that police officers shall hand over a person under arrest to the investigation authority. Under no circumstances shall a person under arrest remain in police custody for a period exceeding four days without a written order for further precautionary detention signed by the investigator.

127. Article 63 requires that an arrest warrant shall be in writing, dated and signed by the issuing person, whose rank and function shall be clearly indicated. The warrant shall also clearly spell out the name of the person to be arrested, the address of his domicile and other relevant information to identify him, and the reason for arrest. The warrant shall lapse if it is not executed within three months of the date of issue, shall become invalid and may not be renewed thereafter without written authorization.

128. Article 70 provides that an accused person who has been detained for a period of six months from the date of his arrest shall not be detained any further without an order to this effect by the competent court to which the case has been referred. This order may be issued by the said court upon a request by the investigating officer, and after granting the accused person a hearing.

129. Article 227 of the Penal Procedures Code cited above requires an investigator who is apprised that a person has been unduly arrested to open an investigation forthwith, to move to the place where such a person is held and to order his release.

130. In conclusion, we may affirm that the Kuwaiti Constitution and laws enshrine with the utmost care guarantees of personal liberty in the terms quoted above and ensure that these freedoms are not tampered with. It is self-evident that these guarantees apply equally to citizens and aliens. In the case of an alien, however, further measures are called for in order to take account of his status, such as the requirement to provide an interpreter during investigation or at hearings, and to notify the consular authorities of his country of origin so that they may send a representative to observe the various stages of the investigation; and finally, to inform the consular authorities of any developments in the case, including the presence of defence counsel and any other relevant measures.

131. Furthermore, it shall be noted that the measures taken by the State of Kuwait to fulfil its obligations under this article, are not limited to the enactment of legislation to prevent torture. The judicial organ has delivered several verdicts under which public officials have been convicted of and duly punished for crimes of torture. The following are examples of such cases:

(a) The verdict delivered by the Criminal Court in case No. 292/35/92/2822 which, inter alia, sentenced the first defendant to three years' imprisonment and labour, or bail of KD 500 to suspend the sentence, on charges of torture and detention of a victim; the defendant was also to be suspended from his function for a period of five years. The second defendant was sentenced to two years' imprisonment. Both were public officers.

(b) The judgement of the Appeals Court dated 15 November 1997 on the appeal of the above sentence. This judgement amended the sentence of the first defendant to imprisonment for two and a half years with labour and suspension from his functions for three years, while the sentence on the second defendant was amended to imprisonment for one year and eight months with labour and suspension from his functions for two years.

(c) The judgement of the Court of Cassation on 16 September 1996 on cassation No. 26 of 1996 upholding the judgement of the Appeals Court in the above case.

(d) The verdict of the Criminal Court on case No. 2785/1993 which provided, inter alia, a sentence of imprisonment for two years and four months with labour on the first defendant, a public official, on the charge of torture. The defendant was also suspended from his functions for one year and ordered to pay the claimant in the civil case the sum of KD 5,000 as interim compensation.

(e) The judgement of the Appeals Court in the case referred to in (d) above suspending the penalty on condition that the defendant signed a statement undertaking to observe good conduct for two years in conjunction with a bond of KD 500.

132. A salient point in this respect is that Kuwait has acceded, by virtue of Law No. 1 of 1996 dated 15 January 1996, to the Convention against Torture and Other Forms of Cruel, Inhumane or Degrading Treatment or Punishment. Kuwait is one of the earliest countries from the region to join this Convention.

Article 8

133. The State of Kuwait affirms that slavery, slave-trade and other similar practices are banned in Kuwait on the grounds that slavery and servitude are at variance with human dignity and values and with the human right to freedom and a dignified life. The State of Kuwait has taken steps to combat these practices, as exemplified by article 185 of the Penal Code, which provides that a term of imprisonment of no more than five years shall be imposed on any person who brings in or takes out of Kuwait another person with the intention of disposing of this person as a slave; the same penalty is applicable to any person who buys, offers to sell or claims another person as a slave.

134. The Kuwaiti Penal Code also prohibits the exploitation of child prostitution. Part II of this Code, which deals with crimes affecting honour and good reputation, provides harsh penalties for criminals convicted of such crimes. Penalties are also more strenuous when such crimes against children or minors are committed by a blood relation or a guardian of the victim or by someone under whose care the victim is legally placed.

135. This position is confirmed in article 187 of the Penal Code, which provides a penalty of life imprisonment for any person who engages in sexual intercourse, without compulsion, threat or ruse, with a female but knowing that she is insane, mentally retarded, under 15 years of age or otherwise deprived of her volition or not in possession of her faculties, or knowing that she does not know the nature of the act in which she participates or believes that it is a legitimate act.

136. The sentence for such a crime shall be the death penalty when the crime is committed by a blood relation of the victim, a person in whose custody or under whose care the victim is placed, a person who has authority over the victim or a person employed in the service of the victim or the service of any person mentioned in this article.

137. Article 200 provides, inter alia, that any person who induces or abets a male or a female person to engage in an obscene act or in prostitution shall be punished by imprisonment for no more than two years and/or a fine of no more than 1,000 rupees. If the victim is under 18 years of age, that person shall be punished by a term of imprisonment of no more than two years and/or a fine of no more than 2,000 rupees.

138. Article 201 provides that a person who compels a male or a female person to commit an obscene act or to engage in prostitution by coercion, threat or ruse shall be punished by a term of imprisonment of no more than five years and/or a fine of no more than 5,000 rupees. When the victim is under 18 years of age, the penalty shall be a term of imprisonment of no more than seven years and/or a fine of no more than 7,000 rupees.

139. Article 202 provides that any man or woman who draws an income, entirely or partially, by coercing, influencing or inducing another to engage in prostitution or in an obscene act, whether or not by mutual consent, in return for a favour or for protection, shall be punished by imprisonment for no more than two years and/or a fine of no more than 2,000 rupees.

140. Article 203 provides a penalty of imprisonment for no more than three years and/or a fine of no more than 3,000 rupees for any person who establishes, manages or in any way helps to establish or to manage a place for prostitution and obscene acts.

141. Article 204 states that whoever induces the commission in a public place of an obscene act or of prostitution shall be punished by imprisonment for no more than two years and/or a fine of no more than 2,000 rupees. The same penalty is applicable to whoever prints, sells, circulates or exhibits depictions, pictures, drawings or other representations that offend decency.

142. In respect of paragraph 3 of this article, which prohibits forced or compulsory labour, it is to be noted that the Kuwaiti Constitution and the laws in force prohibit forced or compulsory labour and the exploitation of workers. Thus, article 41 of the Constitution states that every Kuwaiti has the right to work and to choose the type of his work. Article 42 of the Constitution prohibits forced labour except in the cases specified by law for national emergency and with just remuneration.

143. In conformity with these constitutional provisions, Kuwaiti labour laws are drafted so as to provide protection and guarantees to workers and safeguard the welfare of the workers, whether national or alien. This is yet another manifestation of the policy of Kuwait in the pursuit of justice and welfare for all members of society.

144. Law No. 38 of 1964 on Labour in the Private Sector contains two chapters providing sets of legal and financial guarantees for individual workers. Law No. 28 of 1969 on Labour in the Petroleum Sector draws on and consolidates the guarantees provided for in Law No. 38 of 1964.

145. It is to be noted that labour laws in the State of Kuwait essentially establish minimum criteria for the protection of workers vis-à-vis employers, and contain many legal guarantees for workers. The earlier Law No. 38 contains, in chapter V, clauses pertaining to the employment of minors. These provide that a minor may be employed only after completing 14 years of age, thus ensuring that the minor has received a measure of elementary education. Other clauses provide for the protection of those who wish to receive training in a craft or a profession and regulate conditions for their apprenticeship in line with the latest guidelines of the relevant International Labour Organization conventions. In this context, article 18 of this law bans the employment of boys and girls under 14 years of age.

146. Chapter VI of this law contains provisions relating to the employment of women, noting in particular their nature. Working women are provided with additional guarantees of protection and guarantees to facilitate their work so as to enable them to cope with their responsibilities both in the workplace and at home. Thus, articles 23 and 24 prohibit the employment of women on night duties or in industries or professions that may be dangerous or pose health hazards.

147. Labour laws determine the work day at eight hours and provide that a worker may not continue to work for more than five hours without a break for rest of at least one hour. They also envisage a reduction of working hours when work is particularly onerous or hazardous or in harsh weather conditions. When circumstances require a worker to continue working beyond the normal working hours, he shall be eligible to overtime pay for the additional working hours at the rate of his normal pay, plus 25 per cent. Overtime work is defined as the number of hours that a worker is required in writing to work beyond the prescribed working hours.

148. The Kuwaiti law-makers have also established the right of the worker to work under normal and fair conditions, bearing in mind that this right is one of the fundamental rights of workers established by international labour conventions. Under this provision, the workplace has to meet certain requirements to ensure acceptable human conditions. Other requirements under labour laws include lodging, transportation, nutrition, supplies and so on.

149. One of the most important elements in labour law is the matter of compensation for injury or illness that may occur as a result of work. To provide even more guarantees to workers, the Ministry of Social Affairs is empowered to carry out industrial inspections and to oversee the implementation of the provisions of this law and of other relevant by-laws and regulations.

150. Furthermore, the State of Kuwait, out of its desire to protect workers and their rights, has ratified 14 International Labour Organization conventions, including the conventions prohibiting servitude and forced labour, adopted in 1930 and 1957.

151. It must also be indicated here that in order to provide even further rights and legal guarantees to workers, the competent Kuwaiti authorities are currently examining a new draft law for labour in the private sector whose provisions will be aligned with international law conventions.

152. Concluding its comments under this article, Kuwait wishes to affirm that the State endeavours to create opportunities for employment in various sectors, while leaving to individuals complete freedom to choose the type of work that they prefer and for which they are qualified. Kuwait further asserts that servitude and compulsory or forced labour are prohibited in the country as being inhumane practices that lead to the exploitation of the individual and the violation of personal freedom and, as such, are prohibited by the Kuwaiti Constitution and the laws in force.

Article 9

153. The right of everyone to liberty and security of person established in paragraph 1 of this article is a right that has been recognized by the Kuwaiti Constitution and the laws in force. The preamble of the Constitution, cited

above, provides for upholding "the traditions inherent in the Arab nation by enhancing the dignity of the individual". This means the respect of everyone as a person in all areas. This concept is confirmed by article 29 of the Constitution, which speaks of "human dignity" and by article 30 which consecrates personal liberty.

154. Article 31 of the Constitution establishes the right of every person to security, stating that "no person shall be arrested, detained, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of the law". It further states that "no person shall be subjected to torture or to degrading treatment".

155. As a corollary, the Constitution contains other clauses that ensure the right of a person to security and personal safety, and enshrine the principles of due process for conviction and punishment and of the non-retroactivity of criminal laws. Article 32 states that "no crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevant law has come into force". Article 179 establishes the non-retroactivity of the Penal Code by stipulating that "the laws are applicable to that which takes place after the date of their coming into force, and thus have no effect in respect of what has taken place before such date. However, in other than penal matters, a law may, with the approval of a majority vote of members constituting the National Assembly, prescribe otherwise".

156. The above-quoted article restricts the legislative authority to enact laws with retroactive effect in penal matters. The text underscores the attention given by the drafters of the Constitution to the need to enact laws in the interest and for the protection of the individual.

157. The Constitution further establishes the principle that penalty is personal, the presumption of innocence, the right to trial and the right to have the assistance of a defence counsel.

158. Thus article 34 declares that an accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured. This article further reiterates the stipulation of article 31 that the infliction of physical or moral injury on an accused person is prohibited. This point will be taken up in a more detailed manner in the context of comments under article 14 of the Covenant.

159. Furthermore, provisions of the Penal Procedures and Trials Code reaffirm these principles. The Code, while authorizing the police to stop and arrest a citizen, restricts this freedom. Thus, it requires that the arrest be essential to advance a police investigation, that there must be serious evidence that the arrested person has committed a felony or has been caught in the act of committing a felony, or that other considerations of public security warrant the arrest.

160. It is to be noted that, in accordance with article 48 of this Code, an arrest warrant has to be in writing; a verbal arrest order may not be carried out except in the presence and under the responsibility of the person who issues the verbal order.

161. Article 60 of the Code makes it incumbent on the police to hand over an arrested person to the investigation authority and provides that no person shall remain in custody for a period of more than four days without an order from the investigating officer requiring protective custody.

162. Under article 69, protective custody may not be extended beyond three weeks. Similarly, when an accused person has been kept in detention for a period of six months from the date of his arrest, the detention may not be extended without instructions to this effect from the investigating authority and only after hearing the accused person and reviewing the progress of the investigation (art. 70).

163. It may be noted in this respect that a sentence of imprisonment shall not be carried out without written authorization from the police and public security authorities, which is transmitted in conjunction with the court verdict to the Prisons Administration. In accordance with article 224 of the Penal Procedures Code, a prison warden or any of his subordinate officers may not allow a person to be placed in prison without an order in writing from the competent organ or a court writ of execution of sentence. Furthermore, no prisoner shall remain in prison, under any circumstance, for a period longer than the term specified in the court writ of execution.

164. Article 226 prohibits the arrest or detention of any person without a valid warrant from the competent authorities and only in accordance with the conditions and procedures established by law. Furthermore, no convicted person shall serve a prison sentence in any place other than the prisons specified by laws and regulations in force.

165. It is noted further that the Penal Procedures Code provides for the right of a defendant to retain a defence counsel. Article 120, which establishes the right of the defendant to have the assistance of a defence attorney, states that when the defendant does not retain an attorney the court shall assign a lawyer to act as his counsel. Any defendant in a felony case and any litigant shall have the right to be accompanied by counsel at all stages of the legal process.

166. Article 170 of the Code empowers the court to hire an interpreter to explain to the defendant all statements made by witnesses, as well as the deliberations in the court, if the defendant or any of the witnesses does not understand Arabic.

167. Article 9, paragraph 5, of the Covenant provides that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Article 116 of the Kuwaiti Penal Procedures Code provides for this right by stating that a defendant may ask the court to order civil compensation for any damage he may have suffered as a result of a vindictive, frivolous or impetuous allegation by a witness or a plaintiff.

168. In its general comment 8/106 under this article, the Human Rights Committee notes that the provision of article 9, paragraph 1, applies to deprivation of liberty in any form whether in a criminal case, such as discussed above, or in other cases stipulated by the law, such as confinement on grounds of a mental health condition, drug abuse, or for educational purposes and in any other cases of disability. The State of Kuwait wishes to note that in certain circumstances, administrative measures are taken in respect of individuals on specific grounds that justify such measures. For example, in the case of

contagious diseases, measures may be taken under Amiri Decree No, 33 of 1960 and Law No. 8 of 1969 relating to public health precautionary measures for prevention of contagious diseases. The consignment of drug addicts to hospitals for treatment is based on articles 33 to 35 of Law No. 74 of 1983 on the Control and Regulation of Drugs; article 41 of Law No. 48 of 1987 on the Control and Regulation of Psychoactive Substances and Ministerial Decision No. 82 of 1984 providing for the creation of a panel to examine addicts who are committed by a court order to a psychotherapy centre or other persons who are suffering mental disturbance and may harm themselves or others and who need to receive specialized attention. The panel authorizes the commission of such persons to the relevant institutions on the basis of a written report by a specialized medical doctor (annex 7).

169. As to confinement for educational purposes, Law No. 3 of 1983 empowers the Juvenile Court to order that a juvenile be committed to an appropriate institution recognized by the Ministry of Social Affairs and Labour as an institution for the accommodation and supervision of delinquent juveniles or juveniles prone to delinquency. When the juvenile in question is handicapped by an infirmity, he is assigned to an appropriate rehabilitation centre. When the Juvenile Court determines that the health condition of a delinquent juvenile, or a juvenile prone to delinquency, requires medical attention, the court may order that the juvenile be placed in an appropriate health centre for the purpose of treatment for as long as his health condition requires this attention. The duration is determined on the basis of medical and social reports. A review of this measure is undertaken when these reports indicate that the juvenile may be released.

170. It is clear from the above that a juvenile may be committed to an educational institution only by a juvenile court order or by a decision of the Juvenile Welfare Office. This office is a permanent commission to examine juvenile delinquency problems and the placement of juveniles in appropriate care centres, where they may receive attention, rehabilitation or protection against delinquency, as the case may be. Delinquent juveniles, or juveniles prone to delinquency, are placed only in social welfare institutions run by the Ministry of Social Affairs and Labour.

Article 10

171. The State of Kuwait wishes to emphasize that there is no doubt that the Kuwaiti Constitution and the laws in force make a point of providing adequate guarantees to all persons deprived of their liberty, and that such persons are treated with humanity and with respect for the inherent dignity of the human person. This humane treatment accorded by the State of Kuwait as a matter of principle to prison inmates is, while based on established noble human rights rules, embedded in the Kuwaiti society. It is further upheld by the Kuwaiti Constitution and laws, such as Law No. 26 of 1962 on Prison Regulations, which places several obligations on the competent authorities to provide decent treatment to those deprived of liberty and to improve their conditions. A comparative analysis of this law and the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in 1977, shows that the national law not only conforms with the international standards but also goes beyond and improves on those Minimum Rules in certain respects.

172. In the Covenant, article 10, paragraph 2(a), provides that accused persons shall be segregated from convicted persons and shall be subject to separate

treatment appropriate to their status as unconvicted persons. In Kuwait, Law No. 26 of 1962 on Prison Regulations emphasizes throughout its articles the question of complete separation of accused and convicted persons with consequent different treatment for each category in penitentiary institutions. Article 25 of these Regulations divides inmates into two categories:

(a) Those held in protective custody (detainees) together with those serving light sentences; this group also comprises those imprisoned for failure to pay civil debts and those committed to physical duress; and

(b) Those sentenced to a term of imprisonment with penal servitude.

Each of these two groups is assigned to a separate sector within a prison.

173. Article 27 of the Regulations also provides for further division of inmates by age, criminal history, the type of offence for which they have been convicted, the length of the term of imprisonment, social and cultural background and responsiveness to reform. These Regulations establish separate sets of rights for each category, as elaborated in articles 28 to 47. Under these Prison Regulations, those sentenced to death are not allowed to mingle with other prisoners, and are kept separately.

174. The Law on Prison Regulations stipulates that imprisoned persons shall not be subject to degrading treatment. It requires that health care and medical supervision be provided in every prison through a health unit, headed by a medical doctor who is responsible for all measures to protect the health of the inmates, the prevention of epidemic diseases, the provision of proper diet and of comfortable clothing suitable for weather conditions, and daily breaks for physical exercise. The medical doctor is also required to inspect the quarters of the inmates, to supervise the quality of food and to inspect solitary confinement cells to ascertain their cleanliness. He may also recommend the suspension of a sentence if he deems that the physical or mental condition of the imprisoned person warrants such suspension. In such cases, he transmits his recommendation in writing to the prison warden and ensures in the meantime that the imprisoned person receives special treatment in terms of food, clothing and confinement conditions.

175. The State of Kuwait also pays special attention to the reform and rehabilitation of prisoners in order to prepare them for a better life after prison. In order to ensure the social and cultural development of inmates, a religious preacher is assigned to every institution to exhort inmates to observe virtuous conduct and perform religious duties, as well as social workers and psychologists. The prison administration organizes literacy classes for those inmates who have had no chance to receive any education. Every prison also has a library of religious and general interest books. Furthermore, an inmate may, at his own expense, have books and newspapers brought to him in accordance with the internal regulations of the prison.

176. In every prison, a committee is created to supervise the social welfare of the inmates; it is composed of the prison warden and specialists in the fields of social work, psychology and religion. Its aim is to ensure the social and psychological rehabilitation of prisoners and to recommend necessary measures in respect of the treatment and reform of prisoners. Article 26 of the Regulations provides that a prison warden shall endeavour to provide various social services to inmates and in particular to encourage sports in order to maintain their

psychological equilibrium and morale and to keep them in good physical condition. He is also responsible for maintaining contacts between the inmate and his family to preserve the sense of responsibility of the inmate towards his family, under the overall supervision of the Social Welfare Committee. The warden also keeps the inmate informed of any developments in the family and informs the family of the conditions of the inmate, including the transfer of the inmate to another prison or to an external hospital.

177. The above goes to prove the concern of the State of Kuwait to provide humane treatment and attention in all areas to imprisoned persons, with the overall objective of achieving their social reform and rehabilitation (annex 8).

178. Article 10, paragraph 2 (b), of the Covenant requires that accused juveniles be separated from adults and brought as speedily as possible for adjudication, and that they be accord the treatment appropriate to their age and legal status. The State of Kuwait, taking account of the status of juveniles, has enacted the Juveniles Law No. 3 of 1981. The Law names the organs or bodies which have the responsibility for enforcing the Law, and describes their mandate, and measures and penalties that may be applied in respect of juveniles. These range from reprimand to imprisonment of delinquent juveniles, depending on their age and social, psychological and physical condition, bearing in mind that care for juveniles, their protection from crime and solving their problems constitute the first line of social defence against crime. The Law further elaborates the manner of dealing with juveniles, of safeguarding their social, legal and educational rights and of protecting them against problems that may arise in the course of everyday life.

179. The Law provides for the creation of a juvenile court, which alone has jurisdiction to hear a case involving a juvenile accused of a felony or a misdemeanor or who has become delinquent. By the same Law, a special parquet is set up for prosecuting juvenile cases.

180. Another feature of this Law, which is enacted to serve the interests of juveniles in the first place, is the creation of special penal institutions to accommodate juveniles and to ensure their separation from adults, while extending to them all necessary services and according them the treatment appropriate to their status. Another institution created under this Law is the "Observation Home" which holds accused juveniles who have been ordered by the Juvenile Parquet to be held in protective custody.

181. The Law also specifies the role of social welfare foundations which take care of juveniles prone to delinquency until an improvement in their social conditions has been secured. There are also penal institutions which receive and tend to juveniles whose detention has been ordered by the Juvenile Court. These last institutions are run by specialist cadres from the Ministry of Social Affairs and Labour. Article 17 of this Law stipulates that a term of imprisonment shall be served by a juvenile in penal institutions specifically set aside for juveniles. Regulations for such institutions are to be established by a decision of the Minister of Social Affairs and Labour in consultation with the Minister of the Interior. Article 18 of the Law stipulates that juveniles prone to delinquency shall be handed over to the competent section of the Ministry of Social Affairs and Labour; the Ministry shall make arrangements for their accommodation in appropriate houses and the Juvenile Welfare Department shall handle all matters relating to the juvenile during a period of time that may be renewed by a decision of the Minister of Social Affairs and Labour.

182. From the above and other provisions of the Juvenile Law, it may be seen that the Law has addressed the issues covered by article 10 of the Covenant and that these provisions have taken into account the interest and age of the juvenile in all procedures for juvenile trial and conviction (annex 9).

183. As to physical and psychological rehabilitation and social reintegration, mention has already been made above of the humanitarian role played by welfare institutions created under the Juvenile Law and the health, mental, educational and social care provided by these institutions in the context of programmes aimed at the rehabilitation, training and social reintegration of juveniles. In addition, article 40 of the Juvenile Law describes the role of the "behaviour monitor" who supervises a juvenile placed by a court order under observation in a normal environment for a period of time determined by the Observation Office, depending on the social conditions of juveniles and their progress. The State, as represented by its various institutions, seeks to reform, rehabilitate and socially reintegrate a delinquent juvenile in the context of a supportive environment that caters for the good health, self-respect and dignity of the juvenile.

184. Concluding its comments under this article, the State of Kuwait wishes to refer to the annual report of the US State Department on the world situation of human rights. Under the section on Kuwait, the report pays tribute to the steady improvement of conditions in Kuwaiti prisons; the report also notes the measures taken by the Kuwaiti authorities in this respect. Human rights organizations have, after their representatives undertook on-site tours of Kuwait, reported that there were no significant violations of human rights and paid tribute to the conditions of prisons and prisoners in Kuwait. One such visit was undertaken by a team from the Centre for Human Rights in Geneva in 1996. After visiting Kuwaiti prisons to evaluate their conditions, the team noted in a press report that there were no problems in Kuwaiti prisons.

185. Finally, the Human Rights Committee of the Kuwaiti National Assembly keeps a close and active watch over conditions in Kuwaiti prisons.

Article 11

186. In the State of Kuwait, failure to fulfil a contractual obligation does not constitute a crime under Kuwaiti laws, and consequently no one is imprisoned on such a ground.

187. Article 209 of Law No. 67 of 1980 on the Civil Code provides that when a party to a binding contract fails to fulfil his obligation under the contract, the other party may ask the court to annul the contract and to award him compensation, subject to the merit of his claim. Article 219 of the same Law stipulates that a party to a binding contract may derogate from his obligations under the contract when the other contracting party has failed to fulfil his obligations.

188. Accordingly, Kuwaiti laws set no penalty of imprisonment for anyone who has been unable to fulfil a contractual obligation. The only applicable measure in such a case consists of annulment of the contract or the award of just compensation.

Article 12

189. The Kuwaiti Constitution and laws guarantee the right to liberty of movement, the freedom to choose or change residence and the freedom to return to the country. They also protect the right of anyone to seek political asylum to escape persecution in the country of origin. The Kuwaiti Constitution has enshrined the principles contained in article 12 of the Covenant by stipulating in its article 31 that no person shall be compelled to reside in a specified place, not shall the residence of any person or his liberty of movement be restricted, except in accordance with the provisions of the law.

190. In article 28, the Constitution stipulates that no Kuwaiti may be deported from Kuwait or prevented from returning thereto. Here, it shall be noted that the absolute principles contained in article 28 may not be qualified or restricted by any law.

191. Article 46 of the Constitution states that the extradition of political refugees is prohibited.

192. As to the provisions of article 12, paragraph 3, of the Covenant, the State of Kuwait does not impose any restrictions on the rights and freedoms enumerated in paragraphs 1 and 2 of this article, except for those which are provided by Kuwaiti laws and which are deemed necessary for many considerations. The right to liberty of movement, like many other rights and freedoms, is open to regulation, limitation and sometimes restriction for various considerations, such as national security, public order (ordre public), public health or morals, or the rights and freedoms of others. That is precisely what the Kuwaiti Constitution has established in article 31, which states that liberty of movement shall not be restricted except in accordance with the provision of the law.

193. For the implementation of the foregoing constitutional principles, Law No. 11 of 1962 on Passports, as amended, requires that a Kuwaiti citizen be in possession of a passport on leaving or returning to Kuwait. It also provides that departure or arrival is possible only at exit and entry points specified for this purpose.

194. Article 1 of this Law states that Kuwaitis may not leave or return to Kuwait unless they carry a passport issued in accordance with the provisions of this Law. Other provisions of this Law state that a passport shall be issued only to those who have Kuwaiti nationality in accordance with the nationality laws in force at the time of the issuance of the passport.

195. At times, there may be important considerations that warrant the denial of a Kuwaiti passport or its renewal, or that make it necessary to withdraw a passport that has been issued. Article 19 of the Law leaves the determination of such considerations to the Minister of the Interior. It states that the Minister of the Interior may decide, for specific reasons, to refuse to issue or renew a passport or to withdraw a passport that has been issued.

196. It is to be noted in this respect that Law No. 17 of 1959 on Alien Residence allows aliens to enter and reside in Kuwait subject to two prerequisites: first, that the alien has a valid passport issued by the competent authorities of his country of origin or by any other recognized authority, or a document issued by any of these authorities in lieu of a

passport; and, secondly, that the alien holds an entry visa issued by a designated Kuwaiti embassy abroad or by the Central Administration of Immigration Affairs. The Law further states that the residence of an alien shall not exceed five years, but may be renewed.

197. In Kuwait, aliens enjoy, on an equal footing with citizens, the right to liberty of movement and of residence and the freedom to change their residence. An alien authorized to reside in Kuwait has the freedom to leave and to return to Kuwait. In specific cases, article 31 of the Regulations on Alien Residence allows a legal resident alien in Kuwait to receive permission to leave the country for a period exceeding six months.

Article 13

198. An alien in Kuwait may be deported only upon a judicial decision or a decision reached in accordance with the provisions of the law.

199. The Law on Alien Residence, cited above under article 12, provides in article 16 that the Chief of Police and Public Security Forces may issue a written order to expel any alien, notwithstanding a legal residence permit, in the following cases:

(i) When the alien concerned is convicted by a court of law and the court recommends his deportation;

(ii) When the alien has no recognizable source of livelihood;

(iii) Whenever the Head of Police and Public Security Forces deems that the expulsion of the alien concerned is warranted by public interest, public order (ordre public) or morals;

Article 26 of Decision of the Minister of the Interior No. 640 of 1987 containing the regulations for the implementation of the Law on Alien Residence lists the cases in which an alien may be expelled, notwithstanding a legal residence permit, as follows:

(i) When the alien is convicted and sentenced on a criminal charge or on an offence against honour or integrity;

(ii) When the alien is sentenced in the course of five years to three penalties, one of which is a custodial penalty;

(iii) When the alien is sentenced to any four penalties in the course of five years;

(iv) When public interest, public order (ordre public) or morals warrant expulsion.

In any of the above cases, the expulsion shall be carried out in coordination with the competent authorities.

200. Kuwait wishes to recall in this context the constitutional principle contained in article 46 that "extradition of political refugees is prohibited". Furthermore, it should be noted that the State of Kuwait does not deport any person to a country in which he may face persecution or oppression of any sort.

Kuwait also observes the principle of non-retaliation, which also means that no one shall be deported to a country where his life or freedom may be in jeopardy.

201. It is instructive in this context to point out the on-going cooperation between the State of Kuwait and the Office of the United Nations High Commissioner for Refugees (UNHCR). This cooperation started with the initiation of the UNHCR operation in Kuwait in May 1992 to provide protection to, and work out solutions for the problems of, persons covered by the mandate of UNHCR. The Director of the UNHCR Regional Office for South-West Asia, North Africa and the Middle East, in a report in December 1996, described an agreement between UNHCR and the State of Kuwait as a model agreement that would greatly facilitate the work of UNHCR and expressed the hope that other countries in the region would take similar steps.

202. Finally, Kuwait wishes to affirm that representatives of UNHCR and of the Red Cross have full access to deportation centres in Kuwait and are not hampered in their close monitoring of these centres.

Article 14

203. All rights stipulated in paragraph 1 of this article are guaranteed by the Kuwaiti Constitution and laws. Thus, in article 162, the Constitution provides that "the honour of the judiciary and the integrity and impartiality of judges are the bases of rule and a guarantee of rights and liberties". Article 166 of the Constitution provides that "the right of recourse to the courts is guaranteed to all people".

204. Furthermore, article 163 of the Constitution declares the essential principle of the independence of the judiciary and of non-interference with the conduct of justice. This article states that "in administering justice, judges are not subject to any authority. No interference whatsoever is allowed with the conduct of justice. The law guarantees the independence of the judiciary and states the guarantees and provisions relating to judges and the conditions of their irremovability".

205. As to the right of everyone to a fair trial by a competent and impartial tribunal, article 2 of the Penal Procedures Code provides that penal courts shall try those accused of a felony or a misdemeanour. These penal courts are divided into two classes: courts of first instance, which include misdemeanours courts and criminal courts; and courts of appeal, which include misdemeanours courts of appeal and high courts of appeal.

206. As to the right of a person to a fair and public hearing, we note that article 165 of the Constitution has established this right by declaring that "sittings of the courts are to be public, except for the cases prescribed by law". Article 176 of the Penal Procedures and Trials Code requires that judgements be rendered in a public sitting.

207. Article 14, paragraph 2, of the Covenant speaks of the all-important principle that everyone shall have the right to be presumed innocent until proved guilty according to law. Here, the State of Kuwait wishes to state that presumption of innocence until guilt is proved is one of the fundamental principles in the Kuwaiti Constitution. Article 34 of the Constitution states that "an accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence

are secured". In line with this constitutional principle, provisions of the Penal Procedures and Trials Code reaffirm the same principle. Article 1 of this Code declares that no penal sentence may be imposed except at the conclusion of a trial held in accordance with rules and procedures prescribed by the law.

208. As to guarantees contained in article 14, paragraph 3, of the Covenant, we may point out that the Penal Procedures and Trials Code has addressed these rights, notably in articles 120, 121, 141, 143, 155, 158, 163, 170 and 171, which assure an accused person of several legal guarantees, such as the right to retain a defence counsel (art. 120); the right to be present at all court hearings (art. 121); the right of plaintiffs and their counsel to be present at all court hearings, even when the trial is held in camera (art. 141). The right of the accused person to be informed of the nature of the charge against him is guaranteed under article 155, which provides that the charge shall be read out and explained to the accused person by the court, and his attention shall be drawn to the fact that he is not required to respond or to speak. Article 170 makes it mandatory on the court to recruit an interpreter when an accused person or a witness does not know Arabic.

209. Following are the relevant articles:

Article 120: A person accused of a felony has the right to retain a counsel to defend him; when he does not, the court may assign a defence attorney for this purpose. A person accused of a misdemeanour and the plaintiffs in any suit at law have the right to have a counsel present with them at all times.

Article 121: An accused person is to be present at all proceedings of the trial. However, he may ask an attorney or a representative to be present in his place when the offence with which he is charged is punishable by no more than one year of imprisonment or by a fine only. Nevertheless, the court may order the accused person to be present in person, or may decide to accept the presence of his representative and exempt the accused person of the obligation to be present, if he is charged with a misdemeanour.

Article 141: The plaintiffs and their attorneys have the right to attend all proceedings of the court, even when the trial is held in camera. None of them shall be ordered out of court unless they behave in a manner that constitutes a detraction from the dignity of the court, disturbance of order in the courtroom or an obstruction of proceedings. A plaintiff thus ordered to leave the court shall not be denied presence at the proceedings for more time than necessary.

Article 143: When, owing to the absence of an accused person, a plaintiff or a witness or for any other reason, the court deems it necessary to reschedule a suit or to defer its consideration to a later sitting or sittings, it may set a new date for the deliberation, instruct those plaintiffs and witnesses present to reappear on the new date and order

that notice be served to this effect to those who are absent.

Article 155: The court shall read out and explain the charge to the accused person. After the charge is thus made, the court shall ask the accused person to state his plea as guilty or not guilty, drawing his attention to the fact that he is not under an obligation to respond or to speak, and that his statements may be used in evidence against him.

Article 158: An accused person shall not be sworn before making a statement, nor shall he be forced or induced in any way to respond or to make any kind of a statement. The silence of an accused person, or his refusal to answer a question, may not be construed as an admission of anything, nor shall he be held to account for silence or refusal to answer.

Article 163: The accused person and plaintiffs may at any time ask for any witness to give testimony or for any other investigatory proceeding. The court responds positively to such request if it deems it to be in the interest of the investigation, but may turn it down if it determines that the purpose of the request is procrastination, malevolence or to mislead or that the request serves no purpose.

Article 171: Each plaintiff may submit to the court written statements of defence, which shall be incorporated in the dossier of the case. At the end of cross-examination, the court hears the statements of the civil rights prosecutor, the defence of the defendant or his representative and the presentation by the civil rights attorney. The plaintiff and the civil prosecutor may comment on statements made by the defendant and the civil rights attorney.

210. It is clear from the above texts that the Kuwaiti law-makers have made a point of fully providing for all legal guarantees in favour of the accused person, and that these guarantees are consistent with relevant international norms.

211. In respect of juveniles, the presumption of innocence until guilt is proved according to law is expressed fully and clearly in the body of relevant laws. A juvenile is presumed innocent until proved otherwise. Thus, Juvenile Law No. 3 of 1983 provides that no arraignment or conviction be made against a juvenile or against his family or guardian before a thorough investigation and fair trial. It is to be noted that Kuwait observes meticulously these rights of juveniles through the application of the Juvenile Law, which takes due account of the status of the juvenile and accordingly prescribes the kind of treatment to be accorded to the juvenile, safeguards his legal and educational rights and supports him in the problems he may encounter. Provisions of the Juvenile Law also take into account the interest and the age of the juvenile in matters of trial or imprisonment. Article 25 of this Law provides for the constitution of at least one juvenile court made up of one judge within the judiciary districts. Article 26 states that the juvenile court shall have judicial penal jurisdiction in all cases involving delinquent juveniles and judicial power to examine the conditions of juveniles prone to delinquency in the cases presented to the court

by the Juvenile Welfare Commission through the Juvenile Parquet. A juvenile court has the sole jurisdiction to try juveniles accused of felony or misdemeanour, or juveniles prone to delinquency according to the evaluation of the Juvenile Welfare Commission.

212. Under article 30 of the Juvenile Law, a juvenile accused of a felony or misdemeanour, or his guardian, has the right to obtain the assistance of a defence counsel. When a juvenile accused of felony, or his custodian, has not retained such counsel, the court shall assign a defence attorney to defend the juvenile. However, when the juvenile is accused of a misdemeanour, the assignment of a defence attorney shall be left to the discretion of the court.

213. An important positive feature of the Juvenile Law for the protection of the interest of the juvenile is that a trial of a juvenile shall not be public; it shall be attended only by the juvenile concerned, his family, witnesses and attorneys, and officials assigned to monitor the behaviour of the juvenile, as well as any other person specifically authorized by the court.

214. Article 4 of the Law makes it clear that provisions of the Penal Code do not apply to juveniles subject to the Juvenile Law.

215. As to the right of the juvenile to have the assistance of an interpreter if he cannot understand or speak the language used in the court, we note that this right is guaranteed to everyone, including juveniles, under article 170 of the Penal Procedures and Trials Code. It is to be noted here that the Juvenile Law also provides for the institutional care of juveniles in order to ensure that they are treated in a manner appropriate to their status. Thus, the Law provides that a juvenile who is prone to delinquency shall be entrusted directly to the Ministry of Social Affairs and Labour; the Ministry is then required to provide a suitable place for his accommodation.

216. Paragraph 5 of this article of the Covenant deals with the right of a person convicted of a crime to a review of his conviction and sentence. This right is established by article 199 of the Penal Procedures Code which provides that any judgement rendered by a court of first instance may be appealed. Procedures for appeal are elaborated in articles 200 to 213. Accordingly, a judgement may be appealed within 20 days if the judgement is made in the presence of the defendant, or from the date the judgement becomes final if made in absentia (art. 201). An appeal is to be submitted in writing to the registrar of the court which has delivered the judgement; this court shall refer the request for appeal together with the dossier of the case to the competent court of appeal within a period of three days (art. 203). Article 211 states that a death sentence delivered by a criminal court shall be transmitted by the court itself to the High Court of Appeal. Article 213 provides that if the defendant himself submits an appeal or a petition for review, the appeal or the petition shall not be harmful to the defendant.

217. The hierarchy of courts is described elsewhere in the present report.

218. The right to appeal is not provided only under the Penal Procedures and Trials Code, but is also contained in the Juvenile Law in respect of judgements concerning juveniles. Thus article 36 of the Juvenile Law allows appeal to be lodged, in accordance with the Penal Procedures and Trials Code, against a verdict by a juvenile court. Article 37 further provides that an appeal shall be lodged, by the juvenile, his legal representative or the Juvenile Parquet, with

the Misdemeanours Court of Appeal when the offence is a misdemeanour or with the High Court of Appeal when the offence is a felony.

219. From the above, it is clear that the principles established by the Kuwaiti Constitution and by the Penal Procedures and Trials Code conform in substance with those established by article 14 of the Covenant in respect of the legal guarantees in favour of an accused person on trial.

220. We may add that the Constitutional and legal clauses mentioned above are not mere dead texts, but are in fact living provisions which are put to use in all kinds of suits at law, regardless of the persons involved. It is also relevant to point out that in the wake of the atrocious Iraqi invasion, Kuwait witnessed a series of trials which received worldwide attention. The accused persons involved were collaborators with the Iraqi regime who were brought to fair and impartial trial on the basis of sound legal provisions. The judicial rights of the collaborators were meticulously observed, pursuant to the applicable international standards and with due regard to the supremacy of law and of constitutional institutions. Furthermore, all trials were public and open to representatives of the international and domestic media, international and regional human rights organizations and groups, and some foreign embassies accredited to Kuwait.

Article 15

221. This article prohibits the application of penal laws retroactively and establishes the right of the offender to benefit from provision made by law subsequent to the commission of the offence for the imposition of a lighter penalty. As to the position of Kuwaiti laws on the provisions of this article, it is to be noted that, in view of the fact that non-retroactivity of penal law is an essential and fundamental principle, they were incorporated in the Kuwaiti Constitution. Article 32 of the Constitution reads: "(1) No crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevant law has come into force".

222. Article 1 of the Kuwaiti Penal Code provides for another pivotal principle, i.e., no act constitutes a crime, and no penalty shall be applied thereto, except by virtue of a provision made by law. Article 14 of the Penal Code further provides that an offence is punishable in accordance with the relevant law in force at the time of its commission. Furthermore, no penalty may be applied for an act committed before the law providing for this penalty came into force.

223. The right to benefit from any legal provision for a lighter penalty made subsequently to the commission of the offence is guaranteed by article 15 of the Penal Code. According to this article, if, subsequent to the commission of an offence and prior to a final verdict, a law that is more favourable to the defendant is enacted, this latter law alone shall apply. However, if, after a final verdict is delivered in respect of an act punishable by law, a new law is enacted that makes this act unpunishable, the new law shall apply and the verdict shall be null and void.

Article 16

224. The right established by this article is provided for in the Kuwaiti Civil Code No. 67 of 1980, which defines the beginning and the end of a personality.

Article 9 of this Code states that the natural personality of an individual begins at being born alive and ends with death, whether death is real or determined. The matter of proving birth or death is elaborated in relevant laws.

Article 17

225. This article provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. In respect of these rights, the Kuwaiti Constitution has provided in article 38 for the inviolability of homes. This article states that "places of residence shall be inviolable. They may not be entered without the permission of their occupants except in the circumstances and in the manner specified by law". The right to secrecy of correspondence is consecrated in article 39 of the Constitution, which reads: "Freedom of communication by post, telegraph and telephone and the secrecy thereof is guaranteed"; accordingly, censorship of communications and disclosure of their contents are not permitted except in the circumstances and in the manner specified by law.

226. In addition to the above, Law No. 32 of 1982 on the Regulation of Civilian Data allows, in article 17, any person to ask for an official statement reproducing all civil data relating to him, his parentage, offspring, or spouses and, in the case of a head of family, relating to persons he is legally obligated to register in accordance with the law. However, this Law does not authorize the disclosure of the above information to any person other than the person concerned, except on the production of an officially approved power of attorney signed by the person concerned.

227. Pursuant to the above constitutional provisions, article 55 of Law No. 31 of 1970 Amending Some Provisions of the Penal Code provides for the punishment of any public officer or employee, or any person performing a public function, who invokes his public office to enter the residence of any person without his consent or in circumstances other than those specified by law, or in disregard of rules and procedures described by law. The penalty for such an offence shall be a term of imprisonment of no more than three years and/or a fine not exceeding KD 250. Elsewhere, article 122 of the Penal Code punishes any public officer who enters the residence of any person without his consent, or in circumstances other than those specified by law, with a term of imprisonment of no more than three years and/or a fine not exceeding 3,000 rupees.

228. To preserve the dignity of the person, to safeguard the inviolability of the family, to protect society and to ensure that no one is inconvenienced, the Kuwaiti laws punish with a penalty of a term of imprisonment of no more than six months and/or a fine not exceeding KD 100, anyone who deliberately harasses others through the use of the telephone. The above provision is contained in article 1 of Law No. 19 of 1976 on the abusive use of the telephone.

229. Penal Code No. 16 of 1960 contains a separate chapter for offences against the character, honour or reputation of a person and punishes any act or offence that is likely to detract from the reputation, or offend the honour or standing, of any person. Article 209 of this Code provides for the punishment of whoever ascribes to another person, in a public place or in the sight or the hearing of a third party, an incident which detracts from reputation. Article 210 states that whoever utters, in a public place or in the sight or hearing of a third party, a revilement of a second person that offends the honour or reputation of

the second person, without ascribing any given incident to the second person, shall be punished with a term of imprisonment of no more than one year and/or a fine not exceeding 1,000 rupees.

230. Article 211 provides that whoever sells or offers to sell material that he knows to be covered by articles 209 and 210, or material that he knows to contain phrases, depictions or drawings, written or printed marks or recorded statements whose disclosure constitutes defamation or revilement, shall be punished by a term of imprisonment of no more than six months and/or a fine not exceeding 500 rupees.

231. It is to be noted in this respect that everyone in the State of Kuwait has the right to bring a civil action against any person or newspaper for violating his privacy or publishing information that offends his honour or reputation.

232. The above provisions demonstrate that Kuwaiti laws protect the individual from interference with his privacy, residence, or correspondence and attacks on his honour and reputation, and provide appropriate punishment for any such interference or attacks.

Article 18

233. The rights stipulated in this article are enshrined in article 35 of the Kuwaiti Constitution which provides that the State protects the freedom to practising religion in accordance with established customs, provided that it does not conflict with public policy or morals. The Penal Code also guarantees that right: article 109 of the Code imposes penalties on whoever vandalizes, damages or desecrates a place prepared for the observation of religious worship, or, knowing the significance of his act, performs within this place an act that detracts from respect of the religion observed therein.

234. Article 110 of the same Code states that whoever knowingly desecrates a place set aside for the burial of the dead, for the conservation of dead bodies or for the performance of funeral rituals, knowingly causes a disturbance to people meeting to perform funeral rituals or knowingly profanes the sanctity of a dead person, shall be punished by a term of imprisonment of no more than one year and/or a fine not exceeding 1,000 rupees. Article 111 of the Code states that whoever broadcasts, by a public means, views that constitute ridicule, contempt, or disparagement of a religion or a religious sect, or an attack against the beliefs of this religion or sect, its precepts, its rites or its teachings, shall be punished by a term of imprisonment of no more than one year and/or a fine not exceeding 1,000 rupees.

235. In evidence of this position we see that in Kuwait, a Muslim country hosting residents of various nationalities, cultures, religions and ethnic origins, all people practise their religious worship in full freedom, without any interference, coercion or intimidation from the State. In fact, the State of Kuwait has a long history of religious tolerance. As an example, there are six churches and some 100,000 Christians enjoy full freedom of worship. Furthermore, Kuwaiti laws and regulations allow all foreign communities in Kuwait to establish their own schools, without any restrictions except as specified by law.

236. In this respect, Kuwait wishes to note the case of Robert Kambar, a Kuwaiti citizen who announced his apostasy from Islam. The case has had far-reaching domestic and international ramifications. However, the person concerned has not been subject to any threats from the State or from ordinary citizens. This incident serves as concrete evidence of the respect for the full freedom to adopt, observe and practice any form of religious worship in the State of Kuwait.

Article 19

237. The State of Kuwait wishes to report that the right to express opinions freely is guaranteed under the Kuwaiti Constitution and legislation. Each citizen has the right to freely express his opinion verbally, in writing or through the media, provided that he does not transgress the limits of the law, attack the honour of others, offend public morals or undermine national security or safety or public order (ordre public). Article 36 of the Constitution forms the legal foundation for freedom of opinion. It states that "freedom of opinion and of scientific research is guaranteed", and further establishes the right to express opinions through any means whatsoever.

238. Expression of opinion has many forms, covering freedom of expression, freedom of the media, freedom of education and learning, freedom of assembly and freedom of association. All these forms of freedom of opinion are guaranteed by the Constitution.

239. Article 37 of the Constitution reaffirms the provisions of article 36, i.e. the right to express and to publish an opinion in writing or verbally or in any other way, by stating that "freedom of the press, printing and publishing is guaranteed in accordance with the conditions and manner specified by law". The freedom of the press as an information tool in this article also covers the freedom of the other mass media, including printing and publishing.

240. In implementation of these constitutional provisions, Law No. 3 of 1961 on Printing and Publishing was enacted. Article 1 of this Law stipulates that the freedom of printing, writing and publishing is guaranteed within the limits of the Law. Chapter III of this Law describes those matters which are prohibited from publication as follows:

(i) Anything that may adversely prejudice the tenets of the divinity of God, or the person of the Amir;

(ii) Anything that may prejudice Heads of other States or disturb peaceful relations between Kuwait and other countries;

(iii) Anything that may offend public morality or denigrate the dignity or personal freedom of others;

(iv) Anything that may constitute an instigation to commit crimes, or foment hate or dissention among members of the society.

241. Article 28 of this Law defines the penalties to be applied to the editor-in-chief and the writer if anything that is covered by the above items is published by a newspaper or a periodical. It shall be noted that a Kuwaiti citizen has several channels open to him to express his opinions in complete freedom. All the mass media are available for citizens to express their

opinions; citizens also have access to clubs and cultural societies, both governmental and non-governmental, throughout the country, whose activities constitute an important channel for the expression of opinion. This freedom is subject only to restrictions specified by the law for the purpose of protecting public morals, public order (ordre public) and the sanctity of religions. Freedom of opinion and the right to express opinions in the State of Kuwait are enjoyed by everyone without any discrimination on the grounds of sex, language, religion or any other ground.

242. It is emphasized here that the State of Kuwait recognizes the important role played by the various mass media. The State guarantees that everyone has access to information and material obtained from national and international sources. For this purpose, many State bodies engage in field studies and in seminars to discuss and release the maximum amount of information and to obtain a knowledge of the latest scientific developments in various fields, from both domestic and international sources. The State further seeks to exchange scientific, cultural and other information through bilateral and multilateral agreements with other countries. Most of these agreements provide for cooperation in the production, publication and exchange of knowledge in various fields.

243. As to the legal regime governing the ownership and licensing of newspapers and magazines, chapter II of Law No. 3 of 1961 on Printing and Publishing delineates, in articles 9 to 22, the measures to be followed in order to publish newspapers, magazines or any other publications, whether periodically or on a regular or irregular basis. Article 10 of the Law makes it mandatory on any newspaper to have a managing editor or editor-in-chief who is responsible for oversight of all the contents of the newspaper. Article 11 provides that the owner and the editor of the newspaper shall be Kuwaiti citizens living in Kuwait, with full legal capacity and of good repute and conduct.

244. Article 13 states that no newspaper shall be published without a licence issued by the Director of the Department of Printing and Publishing. Articles 14 and 18 specify the procedures to be followed to obtain such a licence (annex 10).

Article 20

245. In paragraph 1, this article places an obligation on States Parties to the Covenant to prohibit any propaganda for war, while paragraph 2 prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

246. With regard to the obligation to prohibit any propaganda for war, contained in article 20, paragraph 1, the Kuwaiti Constitution establishes, in article 157, a fundamental principle which constitutes the policy that has been followed by the State of Kuwait since its inception until the present, i.e. peace, the pursuit of peace and the repudiation of wars that cause destruction to mankind. This article declares that "peace is the aim of the State". Further, article 68 of the Constitution speaks of "war", but qualifies it as "defensive", and stipulates that "offensive war is prohibited". Such is the policy that has always been pursued by Kuwait, a peace-loving nation that rejects war and any propaganda for war, as well as any action that may be conducive to war. Kuwait has voiced these principles in all international forums and has always supported

the maintenance and consolidation of international peace and security and the peaceful settlement of disputes.

247. As to the provision of paragraph 2, several constitutional principles relevant to this obligation are cited here under, as well as other texts from other national legislations.

The Kuwaiti Constitution

248. To begin with, we may point out that the Kuwaiti Constitution contains in several articles the fundamental principles of justice, equality and the rejection of any discrimination in various economic, social, cultural or other areas, which have been cited elsewhere in the present report. The following two articles of the Kuwaiti Constitution are more directly related to the provision contained in article 20, paragraph 2, of the Covenant:

> Article 7. "Justice, Liberty and Equality are the pillars of society; cooperation and mutual help are the firmest bonds between citizens".
>
> Article 29. "All people are equal in human dignity and in public rights and duties before the law, without distinction as to race, origin, language or religion".

Position of other Kuwaiti legislation on the application of article 20, paragraph 2, of the Covenant

249. If the above constitutional texts address the obligation under paragraph 2 in general terms, relevant national legislation has dealt with this matter in more detail, as follows.

> Article 6 of Law No. 24 of 1962 on Community Service Societies prohibits associations or clubs to engage in political activities or religious disputes or to foment sectarian or ethnic feuds.
>
> Article 7 of Law No. 42 of 1978 on Sports Organizations prohibits any sports organization to interfere or engage in political matters or religious disputes or to foment sectarian or ethnic feuds.
>
> Article 73 of Law No. 38 of 1964 on Activities of Community Associations prohibits trade unions and employer organizations engaging in religious or sectarian activities.
>
> Article 27 of Law No. 3 of 1961 on Printing and Publishing prohibits the publication of any matter that may constitute an instigation to commit a crime or to foment hate or dissent among members of the society.
>
> Articles 109 to 111 of the Penal Code deal with profanity against religions.

250. In discussing the implementation by Kuwait of the obligations contained in article 20 of the Covenant, the State of Kuwait wishes to underscore the lofty constitutional principles that repudiate wars and call for equality, justice and non-discrimination among people. It also wishes to point out that other legislative texts contain provisions against racial or religious discrimination and against any call for discrimination or hate or any attempt to spread hate

and hostility in the society, as elaborated above. Furthermore, the State of Kuwait has acceded to the present Covenant, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. These international instruments form, pursuant to article 70 of the Constitution, part of the national legislation and, as such, serve as further evidence and demonstration of the profound commitment of the State of Kuwait to the provisions of this article.

Article 21

251. The right of assembly is to be considered as an aspect of freedom of expression, since assembly is a means of exchanging views and of contacts between individuals. This right, in its specific and its general manifestations, is enshrined in article 44 of the Kuwaiti Constitution, which states that "individuals have the right of private assembly without permission or prior notification, and the police may not attend such private meetings". The Constitution further enumerates various forms of assembly and gives permission for all of them, whether the assembly is in the usual form of a rally in a public place, or takes the form of a procession in the streets or gatherings in public. However, all these forms of assembly are permitted only in accordance with the modalities and under the conditions prescribed by law and provided that their purpose and means are peaceful and not contrary to public morals.

252. Under the Kuwaiti Penal Code, assembly in a public place is not prohibited unless the purpose of assembly is to commit a crime or to disturb public order (ordre public).

253. Decree Law No. 65 of 1979 on Public Assembly describes the procedures to be followed for holding or organizing any rally, procession or demonstration, whether moving through the streets or remaining in a fixed place. Article 1 of this Law establishes the definition of a gathering covered by this Law. Article 2 describes the cases in which some types of assembly may not be covered by the Law. Article 5 requires that an authorization be given for holding any public assembly. Article 11 gives the police forces the right to be present at such public meetings on condition that they keep at a distance from the actual assembly; nevertheless, the police forces have the right to intervene to disperse the meeting if requested to do so by the organizers of the meeting, when the continuation of the meeting is likely to disturb public security or public order (ordre public), if a crime is committed in the course of the meeting or in the case of any violation of public morals.

254. Chapter II of this Law covers processions, demonstrations and rallies that stand or move in the streets and public places, and which are attended by more than 20 persons. Article 12 makes it a prerequisite to obtain an authorization for any such assembly, while article 16 provides for the punishment of whoever organizes or holds a public meeting or a procession without such an authorization. Articles 16 to 20 specify the various penalties imposed in the various cases of violation of this Law or on whoever fails to heed orders to dissolve the meeting in the event of any violation of the provisions of this Law (annex 11).

255. To sum up, all Kuwaiti legislation, starting with the Kuwaiti Constitution and ending with Law No. 65 of 1979, is consistent with the principles covered by article 21 of the Covenant. These laws provide for and protect the right of

assembly and do not impose any restrictions on the exercise of this right except those that may be necessary in the interests of national security or public safety, public order (ordre public) or for the protection of public morals.

Article 22

256. Kuwaiti legislation distinguishes between freedom of assembly, discussed above, and freedom of association and to form trade unions. This latter freedom is treated separately in article 43 of the Kuwaiti Constitution, which stipulates that "freedom to form associations and unions on a national basis and by peaceful means is guaranteed in accordance with the conditions and manner specified by law". It is to be noted that this article requires that associations and unions be formed "on a national basis". This prerequisite is essential in the view of the drafters of the Constitution who envisaged keeping these associations and unions free of any foreign influence or dependence. The article also establishes the right of citizens not to be compelled to join any association or union.

257. Pursuant to the above constitutional principle, Law No. 24 of 1962 on the Organization of Clubs and Community Service Societies was enacted. The Law is made up of five chapters. Chapter 1 defines the clubs and community service societies that are covered by the law and proclaims that their judicial personality may not be recognized before they are registered under this Law; it also specifies the conditions for the constitution of any such society or club (art. 4). It further declares that such societies or clubs may not pursue any illegal or immoral objectives or other objectives not spelled out in their statutes; nor shall they interfere in political activities, religious conflicts or sectarian feuds (art. 6). Chapter II addresses the modalities and requirements for the constitution of their boards of management, chapter III deals with their general assemblies, chapter IV discusses their financial arrangements and chapter V takes up matters relating to the dissolution of clubs or societies in the cases specified in article 27 (annex 12).

258. Law No. 38 of 1962 on Work in the Private Sector also provides for this right in its chapter XIII on trade unions and employers' organizations. Thus, article 69 of this Law guarantees the right to form employers' organizations and the right of workers to organize themselves in trade unions in accordance with the provisions of this Law. Article 70 allows workers employed in the same enterprise, profession or craft or in similar or related professions or crafts, to organize unions to protect their interests, defend their rights, pursue the improvement of their material and social conditions and represent them in all matters of concern to them. Article 74 of this Law describes the procedures to be followed for the formation of such unions (annex 13).

259. While Article 69 provides for the right to form trade unions and labour syndicates, article 73 forbids these unions and syndicates from engaging in political or sectarian matters or investing their funds for purposes other than those spelled out in their statutes.

260. It may be noted that community service societies in Kuwait comprise 55 non-governmental groups and 17 trade unions. They all exercise their functions and rights to the full extent, including the right to express their views in the manner they deem appropriate. Employers and businessmen in Kuwait also have their unions and, as of 1994, there have been 22 such organizations (annex 14).

261. As to the formation of political parties, it is well known that there are no political parties in the State of Kuwait. The Annotations to the Constitution state the following, concerning article 43:

> "Article 43 establishes the freedom to form associations and unions, but has not provided for the formation of organizations whose general description may put them in the category of political parties as such. The idea is that the constitutional clause is not meant to contain a provision that allows for the formation of parties. On the other hand, the absence of such a provision from the text does not mean the consecration of a constitutional ban that may indefinitely restrict any future action to authorize the formation of such parties, should the law-makers consider it appropriate. Therefore, the constitutional clause neither stipulates nor prohibits the freedom to form parties, but leaves the matter to the normal process of law-making, without specifying a direction for or against any such measure in the future."

262. It should be further noted in this context that the State of Kuwait has not merely enacted legislation providing for the freedom to form trade unions and societies but has also been associated with conventions protecting this freedom. Thus, Kuwait joined the Convention concerning Freedom of Association and Protection of the Right to Organize on 11 June 1961. It has continued, since then, to observe the provisions of this Convention.

Article 23

263. This Article recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and State. We may affirm in this context that the State of Kuwait pays special attention to the family as is manifest from the multiple pieces of legislation which have a bearing on the family. By virtue of these laws, Kuwait endeavours to safeguard the security and stability of the family. The following is a review of the relevant legislation.

The Kuwaiti Constitution

264. This is the legal framework within which all social legislation is enacted; its provisions contain many fundamental principles underlying the Kuwaiti society, all of which seek to preserve the human person, protect his rights and freedoms and prescribe the responsibilities and obligations of the State towards family and childhood. The following are the relevant articles:

> Article 8. The State safeguards the pillars of society and ensures security, tranquillity and equal opportunities for citizens.
>
> Article 9. The family is the cornerstone of society. It is founded on religion, morality and patriotism. The law shall preserve the integrity of the family, strengthen its ties and protect motherhood and childhood with its support.
>
> Article 11. The State ensures aid for citizens in old age, sickness or inability to work. It also provides them with services of social security, social aid and medical care.

265. The State of Kuwait has undertaken to provide for the protection, welfare and means of decent living of the family, as may be evidenced by the following commitments undertaken by the State:

(a) The State of Kuwait is committed to provide the family with appropriate housing to ensure its privacy, security and stability.

(b) The State of Kuwait undertakes to provide free education for everyone, as it is convinced of the importance of education as a tool in the service of the family and its development.

(c) The State of Kuwait provides free health protection to all citizens and residents in the belief that protecting the family from disease and ensuring its healthy growth are means to build a strong and stable society.

(d) The State provides aid to citizens in old age or sickness; it also provides social welfare and security to all citizens to support individuals and the family in general and ensure the family against future emergencies that may disturb the family or endanger its well-being.

Other legislation

266. Chapter V of the Kuwaiti Person Status Code contains provisions in respect of lactation and the nurture of infants and conditions for their custody. Chapter VI regulates the obligation of parents in respect of expenditure for maintenance. Article 202 of this Law provides that an affluent father and/or linear ascendant shall be obligated to support a child and/or linear descendant when the latter is unable to earn his living, until such time that the child/linear descendant can dispense with such support.

267. Inability to earn a living is a condition that accrues to an under-age or a female person. In principle, a female shall not be forced to face the hardship of having to work and a father may not compel his daughter to seek employment. However, if she already has an income-earning employment or profession, she is to be considered as self-sufficient. Under this Law, a person is considered to be unable to earn his living if he cannot work or if he is a student whose studies make it impossible for him to earn his living.

268. Article 203 of this Law also provides that: (a) when the father has no money but the mother is affluent, she will have the obligation of maintaining the child, and the expenditure shall be considered as a debt on the father that she may claim when and if the father becomes affluent; the same rule applies if the father is absent and child support cannot be obtained from him during this absence; and (b) when both parents have no money, maintenance shall be due from whoever would have been legally obligated to pay for maintenance had the parents not been alive, and the expenditure shall be considered a debt on the father to be claimed by the provider of maintenance if and when the father becomes affluent.

269. In addition to the above, the State of Kuwait believes that social welfare is a basic right of all citizens and an important element of the social security of the family. Hence, the State has enacted Law No. 61 of 1976 on Social Security, as amended, to extend the umbrella of social security to all Kuwaitis in all sectors of employment: government, petroleum and private. This Law applies to all workers and its protection covers a wider range of risks. For

example, it is not confined to the situations of death and old age but provides for disability and sickness. The Law also covers some categories of Kuwaitis who are not employed in any sector, such as business owners, self-employed Kuwaitis in various vocations or professions, members of the National Assembly and of municipal councils, mayors and other categories whose eligibility is determined by a decision of the Minister of Finance. These categories are given the option to benefit from the insurance scheme under this Law. The categories of persons eligible to benefit from social security under this Law are the following:

(a) Kuwaitis employed by an employer who is obligated to provide insurance;

(b) Kuwaitis covered by insurance in accordance with article 53 of the Social Security Law. These include members of the national and municipal councils, members of liberal professions, free craftsmen and those engaged in commerce.

270. Provisions of the Social Security Law exclude from coverage under this law all military personnel, whether in the Armed Forces, the Police or the National Guard. These categories are covered instead by Law No. 27 of 1961 on the Pensions and Retirements Benefits of the Military Personnel of the Army and the Armed Forces.

271. To complement the above-mentioned law and its amendments, Law No. 11 of 1988 was issued on 1 March 1988 providing the option of participation in the insurance scheme to Kuwaitis working abroad and other Kuwaitis in similar circumstances. According to the new law, Kuwaitis who are working outside Kuwait, or who are employed in Kuwait by an employer to whom Law No. 61 of 1976 does not apply, may choose to participate in the insurance scheme provided for in chapter III of Law No. 61 of 1976, with due regard to the provisions of Law No. 11 of 1988.

272. In order to assure Kuwaitis of a certain standard of living, the State of Kuwait has enacted Law No. 56 of 1989, raising the retirement pension when new children are born to the beneficiary after retirement. This Law has been issued upon directives from the Amir of Kuwait to increase the retirement pensions of both civilian and military retirees in the case where children are born after the date of retirement or of the termination of service of the pensioner.

273. In keeping with the deeply rooted principles on which Kuwaiti society has been founded, notably the principles of social solidarity which date back to the emergence of the Kuwaiti society, the State, in the early phases of legislative and legal codification, enacted Law No. 9 of 1962 on Public Aid under which every Kuwaiti is assured of State assistance and support against the misfortunes of life. Gaps in this Law were later addressed in Law No. 22 of 1987 on Public Aid, which contains rules and regulations for the provision of assistance to Kuwaiti families and individuals. Article 2 of this Law states that the provisions of this Law apply to Kuwaiti families and individuals who merit such assistance from among eligible categories to be determined by a decree. Law No. 22 of 1987 has indeed been drafted so as to cover the situations of major hardship that may be encountered by a Kuwaiti family, such as:

(a) The death of the family provider, leaving a widowed wife and orphaned children;

(b) Illness or disability of the family provider;

(c) The inability of the provider to meet necessary expenses, such as in the case of the physically disabled or imprisoned heads of families;

(d) Other emergency situations, such as a calamity or a bereavement that may occur within a family which is not eligible for assistance provided to deserving categories.

274. The Law makes it possible to grant additional aid to families and individuals to enable them to cope with unforeseen obligations or to fulfil certain social obligations that are not covered by the situations described above.

275. To implement the above law a decree was issued determining eligibility for public aid, assessing the amounts to be paid and committing funds for aid. Under this decree, the amounts paid to eligible cases have been increased and the eligible categories are listed as follows:

(a) A widow supporting children, who is left without a provider after the death of her spouse;

(b) A divorced woman, upon the expiry of the legal term after which the divorce becomes final, who is supporting children and has no source of income other than State aid to assure herself and her children of a decent living;

(c) An old man over 60 years of age who is responsible for a wife and children but has no support;

(d) Families of imprisoned persons, when the head of the family is sentenced by a court to a prison term during which time the family has no source of income, thus making it obligatory for the State to provide for a decent living for the wife and children;

(e) A person suffering from partial or total physical disability that renders him unable to be gainfully employed and to support his family, and who is over 18 years but under 60 years of age;

(f) An invalid or any other person who cannot engage in gainful employment to support himself and his family;

(g) A physically disabled person or a person whose income has decreased below the requirements of supporting his wife and children, and who has been proved unable to supplement his income through another employment; and

(h) Any person who has not received or continued any education after the elementary school level, and who has no one to support him;

276. A family eligible for assistance under the above-mentioned laws receives this assistance through social welfare units. At present, there are 19 such units spread over residential areas, each unit serving four to five residential areas.

277. Out of humanitarian considerations and in order to protect a Kuwaiti mother and her children against possible hardships, the Kuwaiti law-makers have

provided for the extension of the coverage of the law on public aid to a Kuwaiti wife and her children when the wife is married to a non-Kuwaiti who has become disabled and cannot, subject to medical proof, perform any work or who has become dependent on assistance owing to circumstances beyond his control. This latter case has been included by virtue of Law No. 54 of 1979 amending the Law on Public Aid.

278. The State of Kuwait has not only enacted laws to ensure that families enjoy the benefits described above, but has also made sure that the penal laws include provisions for preserving the unity of the family and for protecting the family against possible disintegration, break-up or collapse. Thus, article 132 of the Penal Code stipulates that the provisions of the article do not apply to spouses and family members concealing a family member against whom an arrest warrant has been issued or assisting him to flee from the judicial process. They are also exonerated, under article 133 of the same Code, in cases where they are accommodating a family member who has committed a felony or misdemeanour or are concealing incriminating evidence. Article 197 provides that an offended spouse is entitled to stop the institution of criminal proceedings against a spouse who has committed adultery on condition that the conjugal relationship is resumed as previously. The offended spouse is also entitled to ask that the legal process in such a case be discontinued at any stage or that a final sentence be suspended. Article 241 of the Code also provides that penal action shall not be instituted against whoever commits theft, blackmail, fraud or betrayal of trust against a wife, a husband, a parent or a child, unless the victim requests that action be instituted. In any case, and at any point in the penal process, the victim may request that the process be halted, and has the right to request the suspension of final sentence at any time.

279. The above provisions demonstrate the insistence of the penal codifiers on the preservation and maintenance of family ties, even under the most trying circumstances, against break-up or disintegration.

280. It may be instructive in this context to quote some objectives underlying the policy of social solidarity for the protection and development of the Kuwaiti family in the State of Kuwait:

(a) The development and consolidation of linkages between social and educational institutions, notably the family and the school, to nurture the new generation with respect to democratic values;

(b) Provision of diversified services to children and youth (in the social, health and sports fields);

(c) The promotion of community service societies and the coordination and development of their services to meet adequately the needs of local communities and to develop family potential;

(d) The provision of treatment and preventive care to juveniles and those prone to delinquency, as well as provision for their upbringing in the appropriate healthy family environment;

(e) The enhancement of the role of women in the process of economic and social development, simultaneously reaffirming the role of women in bringing up children and holding the family together.

281. To implement these policy objectives, all competent authorities and organs of the State of Kuwait have undertaken measures, in their respective areas of competence, to ensure the fulfilment of these and other objectives established by the State in pursuit of family development, advancement, protection and well-being.

282. Community service societies play an important role in complementing the efforts of the State to ensure the protection and defence of the family. There are many such societies, with varying emphasis on different objectives, which seek to provide social care to all members of the family through scientific, cultural and educational activities, thus contributing to the progress and development of the family. Such community groups include the many sports clubs throughout the country, the Kuwaiti Society for the Advancement of Children, the Women's Social Association, the Islamic Welfare Society, the "Biader Al-Salam" Society, the Scientific Club, the Kuwaiti Association for the Protection of the Disabled and many others that appear in a list annexed to the present report.

283. Turning to paragraphs 2 and 3 of article 23 of the Covenant, the State of Kuwait recalls the declaration it made on acceding to the Covenant to the effect that the State of Kuwait shall, in case of any conflict between this article and the Kuwaiti Personal Status Code, apply the provisions of its national Code. Notwithstanding this declaration, the State of Kuwait wishes to point out, in respect of the questions of the right to marriage, the freedom to choose a spouse and the age of marriage, that all matters pertaining to marriage, divorce and other personal status questions are regulated by the Personal Status Code, enacted by Law No. 51 of 1984. The provisions of this Code emanate from the tenets and principles of the noble Islamic Shari'a, known as one of the religious laws that have best regulated personal status matters.

284. In addition to provisions of the Personal Status Code pertaining to marriage, Law No. 5 of 1961 was issued in Kuwait to regulate mixed marriages. Articles 33 to 49 of this Code, contained in chapter 1 of part II, deal with cases in which one of the spouses is a non-Kuwaiti and with the applicable law in such cases.

Article 24

285. Kuwaiti laws give primary consideration to the welfare of children and to measures for their protection required by their status as minors. The Kuwaiti Constitution contains several provisions that guarantee care and protection of the family and the young, treating them as the building blocks of Kuwaiti society. The Constitution also emphasizes the role of the family.

286. The cohesion of the family is an objective to be assiduously pursued in order to protect children against exploitation and waste. We have already cited the relevant constitutional provisions, such as articles 9, 10 and 11, elsewhere in this report.

287. Discussing the position of other Kuwaiti laws on the provisions of article 25 of the Covenant, we may point out that the State of Kuwait has found it necessary to complement the constitutional provisions with the following legislation to protect children.

1. Juvenile Law No. 3 of 1983

288. This Law provides for the establishment of juvenile care centres, as well as a number of mechanisms to deal with juvenile affairs. These mechanisms consist of a body of programmes, services and other tools of care and protection for delinquent juveniles, juveniles prone to delinquency or juveniles who have been victims of negligence or abuse. They have as their objectives the correction of the behaviour of juveniles and their social, psychological and educational rehabilitation so that they may be reintegrated in society. These objectives are pursued through the provision of social, health, vocational, educational and religious care. We have indicated above some relevant provisions of this Law, as well as the legal provision that the penalty of death may not be pronounced against minors.

2. Penal Code No. 16 of 1960

289. This Code contains several provisions to protect children against all forms of violence, injury, physical or psychological abuse, negligence or treatment involving negligence, abuse or exploitation, such as in the case of sexual abuse. The Penal Code imposes harsher penalties on the offender when the victim is a minor. We have already cited the relevant legal clauses elsewhere in this report.

3. Foster Family Code

290. The State of Kuwait pays attention to the care of children born out of wedlock and to the treatment of this underprivileged group. Thus, the Foster Family Code No. 82 of 1977 was enacted to encourage families to take children of unknown parentage into their full custody. The Code, however, provides for the supervision of this process by the Ministry of Social Affairs and Labour so as to protect the rights of the foster child.

291. This Code is considered to provide maximum protection to children of unknown parentage. Article 1 of the Code explains that the process of fostering means that one or more children from among the children in the care centres run by the Ministry of Social Affairs and Labour may be taken over by a Kuwaiti Muslim family for the purpose of accommodation and upbringing. The foster family thus assumes all responsibilities in respect of the child/children on behalf of the State, in accordance with the procedures and conditions prescribed by the law. The Department of Foster Families, which is an organ of the Ministry of Social Affairs and Labour, discharges its functions in this respect under the terms of reference established by Ministerial Decision 170/1993. The role of the Department is not merely to arrange for the transfer of children to the foster family, but also to monitor the well-being of these children. According to the Code, fostership may be annulled and the foster child returned to the Department in the case of a violation by the foster family of the fostership conditions established by the Code.

4. Law No. 97 of 1983

292. Under this Law, the General Authority for Minors Affairs has been established as an independent body under the supervision of the Minister of Justice. Its terms of reference provide that it exercises all the functions of guardianship, custody or tutelage. The Authority performs the following duties:

Wardship of Kuwaiti minors who have no guardian or custodian, and of a dormant gestation in the absence of a guardian;

Superintendence of the interest of Kuwaitis of diminished capacity, or of incapacitated, missing or absent Kuwaitis in whose respect a court has not assigned a superintendent for the management of their property;

Supervision of the conduct of other guardians and superintendents; and

Management of inherited property placed in its trust.

293. This Authority also performs many humanitarian and charity functions. For example, it undertakes supervision and care of orphans, providing them with the means for a decent living and providing needy orphans with monthly or seasonal allowances from assistance and endowments funds. The Authority also undertakes visits to Arab and Gulf countries to inspect the living conditions of minors under its supervision, solve their family and financial problems and extend to them assistance on an equal footing with their counterparts in Kuwait.

5. Law No. 51 of 1984 on Personal Status

294. This Law, enacted on 7 July 1984, contains provisions for the protection of a child. Chapters IV, V and VI of part III deal with lactation, custody, kindred maintenance and guardianship. In each of these chapters, provisions are incorporated to guarantee care for and the upbringing of children.

295. In addition to the legal texts mentioned above, the State pursues some of the objectives in favour of children through its development plans. For example the Five-Year Development Plan 1985/86-1989/90 contains the following targets:

(a) Providing for the needs of children in the pre-school age; providing classroom space for every child in kindergarten-school age; attention to expanding the mental faculties of children; supporting the role played by the family and specialized institutions in the education of children;

(b) Provision and maintenance of a healthy environment; protection against environmental degradation and pollution; the provision, facilitation and improvement of health care to all persons; provision of health and rehabilitation services to certain categories and sectors of the society, including children, pregnant women, the disabled, the handicapped and senior citizens;

(c) Provision of social services to care for children, orphans and homeless children;

(d) Provision, development and diversification of social, cultural and sports services for children and young people.

296. As to the requirement of article 24, paragraph 2, of the Covenant that every child shall be registered immediately after birth and shall have a name, the State of Kuwait wishes to indicate that Kuwaiti laws protect the right of a child to have an identity and a name by which he is to be known. To ensure the registration of children immediately after birth, a birth certificate is established for every child immediately after birth; the certificate contains all relevant information such as the names of the parents, and the date and

place of birth. This information is recorded in the registry kept by the Ministry of Health.

297. Law No. 9 of 1962 on the Registration of Births regulates the obligation to register all births. Article 1 stipulates the general obligation of reporting all births throughout the country. Article 2 specifies that a birth in Kuwait is to be reported to the health office in the area concerned, and that the report shall contain the data required by this article. Article 3 lists the persons who are obliged to make such a report (annex 15).

298. According to Decree Law No. 1 of 1988 regulating claims of parentage and the correction of names, certain procedures prescribed by this Decree Law shall be followed in order to institute action to establish parentage or to change a name. Such action must be preceded by an investigation conducted under the supervision of a member of the General Parquet; the investigation shall be carried out upon a request from a person who has a stake in the matter.

299. Paragraph 3 of this article of the Covenant establishes the right of every child to acquire a nationality. We note in this context that the Nationality Law No. 15 of 1959 contains provisions that conform with this right. This Law regulates in detail all matters pertaining to Kuwaiti nationality.

300. Article 2 provides that a child born to a Kuwaiti father shall have Kuwaiti nationality. What matters here is the blood relationship, or the genealogy, rather than the territory where the child is born, A child shall have Kuwaiti nationality as long as the father is a Kuwaiti national, whether the child is born in Kuwait or abroad. Also relevant is the nationality of the father at the time of the birth of the child. Thus, if the father is non-Kuwaiti at the time of conception but acquires Kuwaiti nationality before the birth of the child, the child will then be born a Kuwaiti national.

301. Article 3 specifies that a child shall have the nationality of his Kuwaiti mother when the identity or the nationality of the father is unknown. Thus, when the identity or nationality of the father is unknown, or when the father is illegitimate, the child shall have Kuwaiti nationality through his mother. In this case, nationality is still established through the blood relationship, but by way of the mother rather than the father.

302. Article 3 of this Law further provides that a child born in Kuwait of unknown father and mother shall be given Kuwaiti nationality.

303. Granting Kuwaiti nationality to a non-Kuwaiti will have implications such as are described in articles 4 and 5 of this Law, including the extension of Kuwaiti nationality to the wife, unless she declares her wish to maintain her original nationality. Minor children of a naturalized father also become Kuwaitis until they reach the age of discretion, at which they may choose to adopt their original nationality.

304. The Kuwaiti Nationality Law has thus prescribed the cases in which the Kuwaiti nationality may be acquired. It also specifies modalities and circumstances for the loss of Kuwaiti nationality.

Article 25

305. This article relates to the political rights of citizens and stipulates that these rights shall be guaranteed without unreasonable restrictions.

306. Before describing the legal framework within which these rights are protected, the State of Kuwait wishes to recall that, at the time of its accession to the Covenant, it made a reservation in respect of sub-paragraph (b) of this article on the grounds that it is in conflict with the provisions of the Kuwaiti Electoral Law which restrict the right to exercise political rights to males, to the exclusion of females.

307. As to political rights, and particularly the right to suffrage, we note that article 6 of the Kuwaiti Constitution states that "the System of Government in Kuwait shall be democratic, under which sovereignty resides in the people". Pursuant to this constitutional principle, Law No. 35 of 1962 on Elections of the National Assembly, as amended in 1986, provides in article 1 that every Kuwaiti male who has completed 21 years of age has the right to vote.

308. Other chapters of this Law deal with electoral procedures, offences pertaining to the electoral process and other matters related to elections. On the basis of this Law, elections of members of the National Assembly since its creation have been organized through equal and universal suffrage, freely and fairly, in a spirit of cooperation and with a unity of purpose on the part of all elements of the nation. The last of these elections was held in October 1996 and was covered by all the media. All international, regional and other circles noted that those elections were fair, impartial, well-organized and absolutely free.

309. The democratic process as described above is not confined to the elections for the National Assembly but applies to elections to other bodies, such as municipal councils. Furthermore, the same democratic approach, methods and procedures apply to all other elections in Kuwaiti institutions, such as associations, trade unions and community service societies.

310. From the above, it is clear that the State of Kuwait may be considered as one of the pioneering countries of the region to have taken the road of democracy, out of its faith in the positive contribution of democracy in building a free, strong and distinctive society.

311. As to access to public service in the State of Kuwait, we note that article 26 of the Constitution states that "public office is a national service entrusted to those who hold it", and that "public officials, in the exercise of their duties, shall aim at the public interest".

312. Several pieces of legislation have been enacted to organize governmental service, including the following.

Decree Law No. 15 of 1979, as amended, on the Civil Service

313. This Law contains the basic principles and general provisions of the civil service in the State of Kuwait, which have remained relatively unchanged. By contrast, specific regulations and detailed procedures require a measure of elasticity achievable through the introduction of amendments, as necessary, by virtue of a decree.

314. Article 2 of the Law on the Civil Service defines the "governmental organ" and the "government employee". Article 3 stipulates that the provisions of the Law apply to all governmental organs and to other organs in which service is regulated by special laws. The Law, however, excludes the military personnel of the Army, the Police and the National Guard whose service is regulated by a separate code to be cited below. The Law further specifies posts in the civil service, describes the procedures for recruitment and appointment, and prescribes the rights and obligations of officials.

315. On 4 April 1979, a Decree on the Civil Service was issued to regulate appointment to governmental posts and other relevant matters, such as salary increases, transfers, leave and termination of service.

Judiciary Service Code No. 23 of 1990

316. This Code was issued pursuant to article 163 of the Kuwaiti Constitution, which stipulates that "law guarantees the independence of the judiciary and states the guarantees and provisions relating to judges and the conditions for their irremovability". The Code elaborates the qualifications required for the appointment of judges, the procedures for their promotion, their seniority and their duties. Chapter IV of the Code deals with the appointment and promotion of members of the Attorney General's Office (General Parquet) and of other staff of the courts and the General Parquet, such as financial and administrative officers and clerks.

317. Decree No. 57 of 22 April 1990 establishes the salary scales and allowances of judges and members of the General Parquet.

Law No. 32 of 1967, as amended, on the Army

318. The provisions of this Law apply only to the military. Civilians employed by the Army are covered by the Civil Service Code mentioned above. This Law specifies the military ranks and procedures for commission in the Kuwaiti Army. It also contains provisions on salaries, promotions and service-related matters.

Law No. 23 of 1968 on the Police Corps

319. Article 1 of this Law stipulates that provisions of this Law apply only to members of the Police Corps. The Law also deals with all matters relating to appointment to the Police Corps.

Article 26

320. The Kuwaiti Constitution affirms in more than one place that equality is one of the pillars on which Kuwaiti society is founded. Thus, equality is explicitly provided for the preamble and in article 7. Furthermore, article 29 covers various aspects of equality by providing for the equality of all people in human dignity and in public rights and duties.

321. There are various manifestations of the principle of equality, for example, the following.

Equality before the law

322. This equality is established by the Kuwaiti Constitution and laws in force. There is no discrimination in the application of the law. Article 134 of the Constitution provides for equality in the matter of general taxes. The article states that "no one may be exempted, wholly or partially, from the duty to pay [public] taxes except in the cases specified by law".

323. Article 47 of the Constitution provides for another aspect of equality in public obligations, i.e., military service, which is described by the article as a sacred duty. Citizens are equally required to perform this duty, being equal in human dignity.

324. Article 11 of the Penal Code declares that its provisions apply to any person who commits in the Kuwaiti territory any of the offences stipulated in the Code.

325. There is also the principle of equality in respect of public service. Accordingly, all individuals are equal in the matter of appointment to public posts, in wages and salaries and in the rights and obligations emanating from employment. This principle has been confirmed by the Constitution, the Civil Service Code and the labour law applicable throughout the country. Some of the relevant provisions have been discussed elsewhere in this report.

326. Furthermore, there is equality of access to educational and health services and in other rights contained in the Kuwaiti Constitution and discussed elsewhere in this report.

Equality before the courts

327. This means non-discrimination in the courts and the equal application of judicial procedures. The principle of equality in this respect predicates facilitation of the exercise of the right to have resort to the courts and of litigation procedures so as to make this recourse equally accessible to everyone. In this context, it is to be recalled that the Kuwaiti Constitution, as well as all Kuwaiti laws in force, have guaranteed the right of all citizens to have resort to the courts, whether in civil or criminal cases, without exception and without discrimination. This is consequent to the fact that Kuwaiti laws extend effective legal protection to all citizens and residents, out of the faith that such protection contributes to the construction of a society where justice, equality and freedom prevail.

Equality of access to public service

328. All citizens in the State of Kuwait enjoy equal access to public service; they are also equal in the rights and obligations associated with employment. This equality has been emphasized by the Kuwaiti Constitution, the Civil Service Code and the labour laws in force. Relevant provisions of these laws have been elaborated elsewhere in this report.

Conclusion

329. This report is a general and comprehensive review of the legislative framework within which human rights are protected in the State of Kuwait.

330. In preparing this report, the Kuwaiti authorities have taken into consideration the relevant recommendations adopted in this respect by the Human Rights Committee. The Kuwaiti authorities hope that they have addressed all points of relevance to the Committee in its examination of the implementation of the provisions of the International Covenant in the State of Kuwait. The Kuwaiti authorities are also prepared to provide any additional details that may be needed to supplement this report for its consideration by the Committee.

List of annexes*

Copy of the Kuwaiti Constitution.

Booklet by the Ministry of Planning entitled "A Statistical Profile", containing data and statistics on the State of Kuwait (annex 1).

Statistical publications (annex 2):

Annual Bulletin of Vital Statistics - Births and Deaths, 1994.

General Population Census, 1995.

Preliminary and Revised Estimates of National Accounts, 1994-1996.

Monthly Statistical Bulletin, December 1997.

Law No. 35 of 1962 on Elections for the National Assembly (annex 3).

Law No. 23 of 1990 on the Judiciary Service Code; and Law No. 10 of 1996 amending some Articles of the Law on the Judiciary Service Code (annex 4).

Table showing percentages of women employed in the education sector (annex 5).

Law No. 65 of 1980 on General Mobilization (annex 6).

Articles 33, 34 and 35 of Law No. 74 of 1983 on Narcotic Drugs Control; and article 41 of the Law No. 48 of 1987 on Control of Psychoactive Substances (annex 7).

Law No. 26 of 1962 on Prisons Regulations (annex 8).

Law No. 3 of 1983 on Juveniles (annex 9).

Law No. 3 of 1961 issuing the Act on Printing and Publishing (annex 10).

Decree Law No. 95 of 1979 on Public Rallies and Assemblies (annex 11).

Law No. 24 of 1962 on the Organization of Clubs and Community Service Societies (annex 12).

Chapter XIII of the Law on Work in Non-Governmental and Private Sectors: "Trade Unions and Employer Organizations" (annex 13).

List of trade unions, community service societies and associations in the State of Kuwait (annex 14).

Law No. 9 of 1962 on the Registration of Births (annex 15).

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* The annexes are available for consultation in the secretariat.